OFFICE OF THE
AUDITOR GENERAL
MANITOBA

Version

January 2012

Annual Report to the Legislature

Vision

That the Office of the Auditor General is an accessible, transparent and independent audit office, serving the Manitoba Legislature with the highest standard of professional excellence.

Mission

To contribute to effective governance by the Manitoba Legislature, we provide the Members of the Legislative Assembly with independent assurance and advice on:

- government accountability information
- compliance with legislative authorities
- the operational performance of government

Values

In interpersonal relationships	**In achieving our vision**
Respect	Teamwork
Integrity	Independence
Honesty	Professional excellence
Openness	Balanced perspectives

OFFICE OF THE
AUDITOR GENERAL
MANITOBA

January 2012

The Honourable Daryl Reid
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Sir:

I have the honour to transmit herewith my report titled, *Annual Report to the Legislature*, dated January 2012, to be laid before Members of the Legislative Assembly in accordance with the provisions of Sections 10(1), 14(4) and 28(1) of *The Auditor General Act.*

This report consists of 8 Chapters, each of which is summarized in the first section of this report titled *Overview by the Auditor General.* The Chapters cover diverse subject matters. Chapter 1 summarizes the exceptions found in the course of our financial statement audits which we are legislated to conduct. The other Chapters cover project audits selected independently by our Office after taking a number of factors into account, including risk and significance of the subject matter, potential impact of our audit work, public interest and staff availability.

It is not uncommon for us to find both strengths and weaknesses in the administration of programs we examine. We provide information about both and make recommendations about how weaker practices can be improved. We believe that all of our reports warrant the attention of the Legislative Assembly and its Public Accounts Committee, which examines each of our reports.

In **Chapter 1, Accounts and Financial Statements,** we report that for 2010/11, the Province has again received an unqualified audit opinion on its summary financial statements, which means that the summary statements present fairly, in

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all material respects, the financial position and results of operations in accordance with Canadian public sector accounting principles. Having reliable financial statements is an important starting point in any discussion about understanding the current financial situation and in making policy decisions in the areas of budgeting and long-term fiscal planning.

In **Chapter 2, Appointment Process to Agencies, Boards and Commissions,** we report that overall, there is a need to improve the timeliness and openness of the appointment process in order to meet modern standards of effective governance.

In **Chapter 3, Animikii Ozoson Child and Family Services Agency,** we report that we found several areas that must be addressed to provide for ongoing monitoring and control of the Agency and to protect against the risk of financial irregularities. Governance practices at the Agency need to be strengthened, including financial oversight. We also found that foster homes were not consistently reviewed and re-licensed and that the Child and Family Services Information System was not accurate concerning foster home licenses and children in care.

In **Chapter 4, Food Safety,** we identified areas where planning and performance measurement, enforcement processes, and promotion of preventive food safety activities and programs require improvement to better ensure food safety.

In **Chapter 5, Personal Injury Protection Plan (PIPP),** we report that Manitoba Public Insurance (MPI) properly verified eligibility for PIPP benefits before paying them and adequately supported most decisions to deny or end benefits. But MPI did not always offer or provide benefits promptly or consistently. MPI needs to improve rehabilitation planning, supervisory reviews of claim files, and performance information. It also needs to more clearly define certain benefits and their eligibility rules.

In **Chapter 6, Special Needs Education,** we report that Education had developed regulations, standards, and guidelines that clearly outlined its expectations for the delivery of special needs education, but it was not monitoring for compliance. We found a low level of school division compliance with certain key standards, underlining the need for better monitoring.

In **Chapter 7, Taxation Division Audit Branch,** we report that the Branch does many of the right things. But the Branch can improve its operations and may find more unreported taxes by implementing our recommendation to estimate the tax revenue lost due to unreported taxable business activity in Manitoba, analyze which economic sectors are more susceptible to such activity and use this analysis in planning how to detect unreported taxable business activity.

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In **Chapter 8, Wireless Network Security**, we report that despite many examples of good practices, we found weaknesses that need to be addressed to protect the wireless networks within Manitoba eHealth and Manitoba Lotteries Corporation.

During the course of our audits, the staff of the Office of the Auditor General are in contact with numerous individuals who provide public services in Government Departments, Crown organizations and funded agencies in addition to external auditors who conduct several of the Province's financial statement audits. I would like to recognize the constructive professional relationships which have been maintained throughout the year amongst all of these individuals.

Respectfully submitted,

Original document signed by
Carol Bellringer

Carol Bellringer, FCA, MBA
Auditor General

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Overview by the Auditor General

This report includes the results of our audit work completed in the 2011 calendar year. *The Auditor General Act* outlines two reporting requirements, in Sections 10 and 14. Section 10 requires an annual report to the Assembly about the audit of the Public Accounts and other financial statement audits. About half of our time is spent on such financial statement audits which are prescribed by Legislation. The other half of our time is spent on project audits that we select independently, covering government operations and recipients of public money. Section 14 of the Act requires an annual report to the Assembly on the project audit work carried out. The nature of our audit work and a description of how we select our project audits is more fully described in our annual report on the "Operations of the Office for the year ended March 31, 2011" issued last July.

This year, we have combined the results of all of our audits from Sections 10 and 14 in this report. There are eight chapters as follows:

Chapter 1:	Accounts and Financial Statements: Section 10 Annual Report
Chapter 2:	Appointment Process to Agencies, Boards and Commissions
Chapter 3:	Animikii Ozoson Child and Family Services Agency: First Nations of Southern Manitoba Child and Family Services Authority; Department of Family Services and Consumer Affairs
Chapter 4:	Food Safety: Department of Agriculture, Food and Rural Initiatives; Department of Health
Chapter 5:	Personal Injury Protection Plan: Manitoba Public Insurance
Chapter 6:	Special Needs Education: Department of Education
Chapter 7:	Taxation Division, Audit Branch: Department of Finance
Chapter 8:	Wireless Network Security: Winnipeg Regional Health Authority and Manitoba eHealth; Manitoba Lotteries Corporation

Each Chapter is summarized below:

Chapter 1: Accounts and Financial Statements

We are pleased to report that for 2010/11, the Province has again received an unqualified audit opinion on its summary financial statements, which means that the summary statements present fairly, in all material respects, the financial position and results of operations in accordance with Canadian public sector accounting principles. We are also pleased to report most organizations consolidated into the summary financial statements received unqualified audit opinions. Having reliable financial statements is an important starting point in any discussion about understanding the current financial situation and in making policy decisions in the areas of budgeting and long-term fiscal planning.

To assist Legislators in understanding certain of the complexities of the summary financial statements, we have described the importance of public sector accounting standards, the financial reporting model for summary financial statements, defined net debt, total borrowings, the accumulated and annual surplus or deficit, the change in net debt and the cash position and cash flow.

We have included a discussion on the Province's inclusion of core government results in the summary financial statements. Core results do not include all of the necessary adjustments to completely and accurately report on what has transpired. We are recommending that the Province only report summary results. The summary financial statements in combination with the notes and schedules provide sufficient information on the financial position and operations of the Province. It is also sufficient to enable policy discussions about alternatives for budgeting and long term fiscal planning.

At the conclusion of each of our financial statement audits, we communicate matters for improvement to senior management of the Province or to senior management and the board of directors of the organization being audited. In the event that action has not been taken after a reasonable period of time or if the Legislature should be immediately informed of the matter, we include that information in this report. This year, we have included such information about:

- The requirement to recognize a liability for sick leave benefits
- The annual revaluation of environmental liabilities
- Overpayments to pensioners from the Civil Service Superannuation Fund
- Accruals for wage settlements in the Manitoba Health Services Insurance Plan
- The continuing operations of Leaf Rapids Town Property
- The application of incorrect discounts to some driver premiums at Manitoba Public Insurance
- Areas for improvement in the information technology environment.

Chapter 2: Appointment Process to Agencies, Boards and Commissions

The purpose of our audit was to examine the process used to appoint members to Manitoba's agencies, boards and commissions (commonly referred to as ABCs). Our audit objectives were: to determine whether adequate information is available to Manitobans regarding the appointment process; and to determine whether appointments to ABCs are made in a timely manner.

Although the various ABCs differ significantly in size, complexity and level of responsibility, they all report to government through a responsible Minister.

Final approval for all government appointments ultimately rests with Cabinet, however the process for recruiting and appointing members to each ABC is led by the responsible Minister, who provides their recommendations to Cabinet for appointments to ABCs within their portfolio.

What we found

Developing a competency-driven appointment process is essential to ensuring qualified members are recruited and retained to serve on Manitoba's ABCs. A competency-driven process is one that not only reflects the diversity and geographic needs of the Province, but provides each ABC with the appropriate mix of skills/competencies that are best suited to fulfill its mandate.

Overall, there is a need to improve the timeliness and openness of the appointment process in order to meet modern standards of effective governance. A timely and efficient appointment process is dependent on the focused attention of government Ministers. While understandably Ministers have a number of pressing and critical items vying for their attention, the potential impact of appointment process deficiencies on the effective functioning of the ABC should not be underestimated.

At the onset of our review, there was very limited information on the Government of Manitoba website regarding Manitoba's ABCs and the appointment process. This situation was strengthened in July 2011 with a website link directly from the homepage to improved information on ABCs. Further, the website now allows submissions of applications for consideration to an ABC appointment. This considerably enhances the accessibility and transparency of ABC appointments to Manitobans. Our report notes that there are further enhancements that can be made to the website, including providing a complete list of all ABCs in the Province, and information on the administrative process used to make appointments. Further, the site will need ongoing maintenance and a plan to be developed to ensure the information provided on the website remains accurate and up-to-date.

The appointment process as currently conducted is time-consuming and is intended to take approximately 4 months but often takes longer. Recognizing that in a competency-driven process it takes time to recruit individuals with the appropriate skills/competencies to serve on ABCs, the process should begin sufficiently in advance to ensure that every attempt is made to meet the term expiry.

There should also be enhanced consultation with the ABCs. As the ABCs are in the best position to know the current skills and characteristics that are represented, and what additional skills would best complement that mix to meet the strategic needs of the entity, the ABC Chair and senior management should provide the

Minister's office with a skills/competency matrix well in advance of any vacancies or term expiries.

We believe that all appointments should be kept as current and up-to-date as possible. Our audit found that the timeliness of appointments and reappointments needs improvement, as a quarter of all ABC members (25%) are currently serving with expired terms. About 22% of these have been expired for 3 years or more, with the range of expiries going as far back as 2002. Many pieces of legislation allow members to continue to serve past their expiry date, until *"he or she is reappointed, the appointment is revoked or a successor is appointed."* However, as Order-in-Council appointments generally set a term expiry date, it is arguably not the intent of this legislative clause that members continue to serve with no end date. Acting on term limits is important because it allows for fresh perspectives and renewal in the membership of an ABC over time. Further, by not reviewing the appointments and making reappointments on a regular basis, government is not taking advantage of the opportunity to review the functioning of the ABC and make changes that reflect the ABC's current context. This also limits access and opportunities for other Manitobans to serve on that ABC.

There are 55 ABCs (almost 30%) which do not have staggered terms for appointments. Staggering terms ensures that there is an orderly transition of members on an ABC and that not all members leave the organization at the same time, which would undermine the effective functioning of the ABC. Such practices help to balance the ABC's need for continuity and experience, with the need to refresh the membership and bring on new skills/expertise over time to appropriately reflect the challenges faced by the organization.

Our audit found that there are some members who have served on the same ABC for significant lengths of time. In total there are 308 individuals (20%) who have served their ABC for 10 years or more. Of these, 13 have served over 20 years. While terms of service for members must be long enough to gain experience and cultivate sufficient knowledge to understand the ABC, there must also be sufficient renewal of members to bring new perspectives and experience to the ABC. Serving on the same ABC for an excessively long period of time is not reflective of good governance practices, especially for a deliberative ABC. As government may not wish to lose the valuable expertise gained by an individual who has served on an ABC for a significant length of time, there should be consideration to appointing the individual to become a member of a different ABC, where their experience and expertise could be well utilized and of great benefit to the new ABC.

This report includes 9 recommendations to Government to improve the ABC appointment process. We also include items for consideration by each ABC which encourages them to take a proactive approach in enhancing their relationship with

Government and assisting the Minister's office in making timely, competency-based appointments to their ABC.

Chapter 3: Animikii Ozoson Child and Family Services Agency

We examined financial accounting processes and controls of the Agency, and senior management and Board compensation and expenses. Our audit also included a review of governance practices and an assessment of the Agency's compliance with its funding agreement with the Authority. We did not audit the quality of child care provided by the Agency.

What we found

The Agency has incurred operating deficits over the past several years and has an accumulated deficit in excess of $450,000. They have retained funds in excess of $3.4 million which are owing to the Province, to maintain its cash flow. Since its mandate in 2005, the Agency has expressed concerns to the Authority that the operational funding is not adequate. This funding model has now been revised.

Our audit did not include a full analysis of the causes of the deficits nor an assessment of the adequacy of the revised funding model to address shortfalls and cash flow needs. However, we found several areas that must be addressed to provide for ongoing monitoring and control of the Agency and to protect against the risk of financial irregularities.

Governance practices at the Agency need to be strengthened, including financial oversight. Board members expressed concerns about their ability to recruit new members and the lack of financial expertise on the Board. Both are critical to ensure proper control and monitoring of the Agency.

We examined the internal controls around the preparation of bank reconciliations and the processing of payments. A number of internal control weaknesses were discovered and are described in this report. It is important to note that although these weaknesses appear to be occasional exceptions, they show a lack of segregation of duties which means an irregularity could take place and be covered up by the same individual. While the internal control environment has weaknesses and exposes the Agency to unnecessary risk, we did not find any examples of inappropriate transactions. Also, the Agency does not have a conflict of interest policy, which is a requirement of the funding agreement between the Agency and the Authority. We found examples of conflicts of interest which such a policy should address. Policies were also missing about the types of expenses that are allowed for Board members and staff, Board compensation and employee advances.

While our original objectives did not include the examination of foster home licenses and places of safety, concerns came to our attention and we extended our work on those areas. We found that foster homes were not consistently reviewed and re-licensed annually and that the Child and Family Service Information System (CFSIS) was not accurate concerning foster home licenses and children in care. Similar issues were reported in our 2006 Report entitled *Audit of the Child and Family Services Division Pre-Devolution Child in Care Processes and Practices* and we would have expected these areas to have been remedied within Agencies.

Chapter 4: Food Safety

We examined the Province's food safety system, including systems and practices for strategic planning and performance measurement, developing and enforcing food safety standards, providing food safety education, and promoting food safety programs.

What we found

Manitoba Agriculture, Food and Rural Initiatives (MAFRI) and Health had many systems and practices in place to identify and mitigate food safety risks. Nevertheless, we identified areas where planning and performance measurement, enforcement processes, and promotion of preventive food safety activities and programs require improvement to better ensure food safety. Our key findings are summarized below.

Planning and performance measurement

- The Province's strategic planning for food safety was evolving. MAFRI and Health need to work together to integrate their separate plans, to more fully address risks, and to ensure their plans reflect an appropriate mix of preventive and detective measures.
- Both departments had set some performance targets. However, both need to add indicators of effectiveness and to analyze results compared to targets. Both also need to enhance publicly available performance information.

Enforcing compliance with food safety standards

- The Province's food safety standards were generally consistent with those in other jurisdictions, except the Province did not have mandatory food handler training.
- A common food establishment database put in place in July 2009 was used by most inspectors, but this database was not always up-to-date.
- Neither department had implemented a risk-based approach to determine the priority and frequency of inspections, nor were they able to meet their informal goal of annually inspecting every food establishment.

- Routine dairy inspections had been halted, contrary to an existing regulation, in order to re-assign resources to inspecting food processing establishments.
- Food safety complaints were handled adequately in most cases.
- Inspectors did not always follow up food safety violations, including critical violations, to ensure they were corrected.
- Escalating enforcement options were in place (warnings, fines, health hazard orders, closure, and prosecution), but enforcement actions were not always escalated for repeated serious violations.
- Some initial permits were issued to food establishments before all related requirements were met. Annual permits were automatically renewed, without first reviewing a food establishment's history.
- All inspectors had related training and experience. A conflict-of-interest policy and related processes were in place to ensure inspector independence, but these processes require enhancement to ensure potential conflicts are assessed annually and dealt with appropriately.
- MAFRI and Health relied on informal policies and procedures to guide inspectors and ensure consistent inspection work, although Health was drafting formal policies. Neither department conducted quality assurance reviews of inspection files.

Promoting preventive food safety activities and programs

- MAFRI and Health provided a variety of educational material on food safety for food establishments and consumers. However, educational material and activities could be better linked to trends in critical food safety violations found during inspections. And the focus on consumer safety awareness could be increased and better integrated between the two departments.
- MAFRI promoted the use of preventive food safety programs by providing information and financial assistance to producers and food processors. Health did not similarly provide information on food safety programs to retail and food service establishments.
- MAFRI approved some applications for financial assistance to implement food safety programs before all eligibility criteria were met, but it always verified program implementation and costs before disbursing funds. Documentation of eligibility reviews and verification work could be enhanced.

Chapter 5: Personal Injury Protection Plan (PIPP)

We examined the systems and practices at Manitoba Public Insurance (MPI) for:

- Ensuring that claimants receive all and only the PIPP benefits they are entitled to
- Calculating PIPP benefit amounts
- Managing claimant rehabilitation
- Measuring and reporting on PIPP performance.

What we found

MPI properly verified eligibility for PIPP benefits before paying them and adequately supported most decisions to deny or end benefits. But MPI did not always offer or provide benefits promptly or consistently. MPI needs to improve rehabilitation planning, supervisory reviews of claim files, and performance information. It also needs to more clearly define certain benefits and their eligibility rules. Delayed benefits are not just inconvenient–they can also potentially cause financial hardship and hinder medical improvement and return to work. Inconsistent decision-making inadvertently treats similar claimants differently.

At the time of our audit, MPI was undergoing significant change and many of its change initiatives may help resolve these issues. During our audit, MPI began:

- Replacing its paper-based claim files with electronic files as part of a new claims management system
- Changing its organizational structure to better coordinate case-management services
- Helping case managers more proactively manage injury claims by building rehabilitation planning tools (such as rehabilitation plan templates and disability duration guidelines) into its new claims management system
- Extracting the enhanced performance information available in its new claims management system
- Revising various policies and processes, including drafting a policy to reinterpret eligible rehabilitation expenses under section 138 of *The Manitoba Public Insurance Act*, which requires MPI to help claimants in their "return to normal life" and "reintegration into society".

Other significant areas requiring MPI's attention were a need to:

- Provide more benefit information, particularly for claimants with complex claims
- Provide better explanations and plainer language in decision letters
- Strengthen procurement practices and the accountability framework for service providers

- More regularly and rigorously review and update certain PIPP benefits to ensure they remain reasonable and equitable.

Other important findings included:

- Most commonly used PIPP benefits were clearly defined
- Processes to prevent and detect program abuse by claimants and service providers were adequate
- Appeals processes were in place, although backlogs at the Automobile Injury Compensation Appeal Commission and the Claimant Advisory Office needed to be reduced
- Benefits were calculated accurately, although changes in personal circumstances affecting benefits were not always flagged promptly and annual income tax reviews were not always timely
- Processes to prevent conflicts-of-interest for external independent medical examiners and internal healthcare services staff could be enhanced
- All case managers had related training and experience
- Documented support for the post-accident incomes that MPI deemed claimants capable of earning after reaching maximum medical improvement and completing their vocational rehabilitation needed to be strengthened.

Chapter 6: Special Needs Education

We examined Education's systems and practices for supporting the quality of special needs education, funding special needs education, and measuring and reporting special needs education performance information.

What we found

Education had developed regulations, standards, and guidelines that clearly outlined its expectations for the delivery of special needs education, but it was not monitoring for compliance. We found a low level of school division compliance with certain key standards, underlining the need for better monitoring.

Other significant areas requiring Education's attention were:

- It had limited processes to verify the information on funding applications received from the school divisions, and its documentation often did not adequately explain its funding decisions
- Although one of Educations' objectives was to maximize the outcomes being achieved for students with special needs (consistent with its objectives for all students), it did not monitor or publicly report the outcomes being achieved for these students

- It was aware of clinician shortages and anecdotal accounts of long waitlists for students to receive clinical assessments (particularly in rural and northern Manitoba), but needed to work with school divisions to determine if students were receiving timely access to clinician assessment services.

Other important findings included:

- Education consulted a wide variety of stakeholders in developing standards, guidelines, and support documents for school divisions and parents
- Standards, guidelines and support documents were all generally consistent with those in other provinces.
- Stakeholders had differing views on when or if educational assistants (for whom Education set no educational requirements, consistent with other provinces) were performing any paraprofessional duties not allowed under the *Persons Having Care and Charge of Pupils Regulation*
- Education provided consultation services to school divisions and schools on general and student-specific matters, maintained a limited inventory of assistive technology devices for short-term loan, provided technical support for commonly used assistive technology purchases, and had begun developing learning resources for life skills programs for special needs students
- Education had not recently or formally investigated the potential cost savings and benefits of centralized purchasing of assistive technology licenses for school divisions
- Education ensured and supported teachers' special education knowledge through its teacher certification process and professional development offerings
- Detailed eligibility criteria for funding were not available to school divisions or parents
- Existing departmental financial and operational information on special needs education could be enhanced
- There was limited public reporting on the enrolment and costs for student-specific funding for special needs

Chapter 7: Taxation Division Audit Branch

We examined the Branch's audit selection process, use of performance targets, actions to detect unreported taxable business activity and their overall practices for conducting audits. Our procedures were limited to the examination of file documentation on hand in the Branch, rather than a re-verification at taxpayers' premises.

What we found

The Branch does many of the right things. Specifically it:

- Identified more taxes (tax recoveries) than it cost to operate, generating $5 of revenue for each $1 of operating expenses
- Used targeted risk factors to select taxpayer files for audit
- Set performance targets for tax recoveries per audit hour and the number of audits to be done each year
- Used an audit process consistent with generally accepted assurance standards
- Correctly determined and adequately supported the audit findings (tax assessments) in audit files.

But the Branch can improve its operations and may find more unreported taxes by implementing our recommendation to estimate the tax revenue lost due to unreported taxable business activity in Manitoba, analyze which economic sectors are more susceptible to such activity and use this analysis in planning how to detect unreported taxable business activity.

Chapter 8: Wireless Network Security

Our audit examined the security of wireless networking solutions within Manitoba eHealth (eHealth) and Manitoba Lotteries Corporation (MLC).

What we found

Despite many examples of good practices, we found weaknesses that need to be addressed to protect the wireless networks. We provided our detailed findings to both eHealth and MLC to enable them to remedy all of the weaknesses we encountered. We also provided our findings for eHealth to the Winnipeg Regional Health Authority (WRHA) because eHealth is administratively housed there. Our findings were that:

- Wireless risks are identified but not managed effectively over time
- Information technology security policies do not exist at eHealth and exist but are not current at MLC
- Wireless security policies do not exist
- Network security controls need improvement
- Access point configuration standards need improvement
- Wireless client device configuration standards need improvement
- Wireless monitoring is not performed
- Wireless network administrators require additional training
- Security awareness training is lacking at eHealth.

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Version

Chapter 1

Accounts and Financial Statements

The Auditor General Act, Section 10 Annual Report

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Highlights of this report

The Auditor General Act (the Act) requires us to report to the Assembly by December 31st in each year about the examinations and audits conducted under Section 9 of the Act. This section of the Act relates to audits of the Public Accounts and other financial statements included in the Province of Manitoba's (Province) Public Accounts. Section 10(2) of the Act requires us to indicate anything resulting from this work that we consider should be brought to the Assembly's attention.

We are pleased to report that for 2010/11, the Province has again received an unqualified audit opinion on its summary financial statements, which means that the summary statements present fairly, in all material respects, the financial position and results of operations in accordance with Canadian public sector accounting principles. We are also pleased to report most organizations consolidated into the summary financial statements received unqualified audit opinions. Having reliable financial statements is an important starting point in any discussion about understanding the current financial situation and in making policy decisions in the areas of budgeting and long-term fiscal planning.

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- The requirement to recognize a liability for sick leave benefits
- The annual revaluation of environmental liabilities

- Overpayments to pensioners from the Civil Service Superannuation Fund
- Accruals for wage settlements in the Manitoba Health Services Insurance Plan
- The continuing operations of Leaf Rapids Town Property
- The application of incorrect discounts to some driver premiums at Manitoba Public Insurance
- Areas for improvement in the Information Technology environment.

1. Audit of the Summary Financial Statements

1.1 Auditor's report

Our auditor's report on the Province's summary financial statements as at March 31, 2011 represents an unqualified "clean" opinion. We issue an unqualified opinion when we find that the statements are prepared in accordance with Canadian accounting standards. That was the case for the summary financial statements as reported in the *Province of Manitoba Annual Report for the year ended March 31, 2011* (2011 Annual Report).

1.2 Provincial Comptroller's responsibility for the Summary Financial Statements

The Provincial Comptroller is responsible for the preparation and fair presentation of the financial statements in accordance with generally accepted accounting principles (GAAP). In the case of governments (Canada, Provinces and Municipalities), GAAP is established by the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants (CICA) after broad consultations with stakeholders. See section 2 of this report for more information on the accounting standards used by the Province.

To prepare financial statements in accordance with GAAP, the Provincial Comptroller is required to make judgements, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income and expenses. The Provincial Comptroller is responsible for preparing the summary financial statements, including related notes and schedules. The Provincial Comptroller is also responsible for internal controls, to the extent she deems them necessary to prepare summary financial statements that are free from material misstatement whether due to error or fraud. The Provincial Comptroller confirms this by signing the "statement of responsibility" preceding our audit report.

1.3 Our responsibility as auditor

Our responsibility is to audit the financial statements, form an opinion based on our audit and issue our auditor's report. We conduct our audits in accordance with Canadian generally accepted auditing standards (GAAS). See section 1.4 for information on recent changes to GAAS.

Some key points about our audit report on page 71 of the 2011 Annual Report follow.

Level of assurance: Our audit is designed to obtain reasonable—but not absolute—assurance that the summary financial statements are free of material misstatement. It is not practical to provide absolute assurance in a financial statement audit because it is not practical to test 100% of transactions (due to volume), internal control systems have inherent limitations (due to control override potential), and much audit evidence is persuasive rather than conclusive. Reasonable assurance means we have obtained sufficient and appropriate audit evidence to minimize audit risk to an acceptable level to support our conclusion that the statements are free of material misstatement. This is consistent with GAAS requirements.

Materiality: In our audit report, we give an opinion on whether the financial statements are materially misstated. We plan our audit work to detect material errors in the financial statements. Materiality means how significant a financial statement omission or misstatement can be in order to influence or change the decision of a person relying on those financial statements. We refer to guidance provided by GAAS and exercise our professional judgement in order to set an overall materiality level for the audit. We accumulate all errors or misstatements we noted during our audit and make an assessment of whether they would individually or in aggregate cause financial statement balances to be materially misstated, based on the materiality level for the audit or because of other qualitative considerations associated with the information irrespective of the magnitude of the error.

Audit procedures and evidence: Our audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the summary financial statements. The procedures selected depend on our judgement as auditor, including our assessment of risks of material misstatement of the summary financial statements, whether due to fraud or error. We considered internal controls relevant to the preparation of the summary financial statements in order to design our procedures, but not for the purpose of expressing an opinion on the effectiveness of the Province's internal control. Our audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the summary financial statements.

Opinion paragraph: We issued an unqualified audit opinion on the summary statements, concluding that they were fairly presented in accordance with GAAP, and free of material misstatement. We are not providing an opinion on the effectiveness of internal controls or whether management exercised its fiduciary responsibilities—these are not the focus of a financial statement audit. If we find any ways to improve controls or management practices during our audit, we discuss them with management and put them in a management letter. This is consistent with GAAS.

1.4 New Canadian Auditing Standards

Canadian Auditing Standards: As discussed above, we conduct our audits following GAAS as prescribed by the CICA. For audits of entities with fiscal years ending after December 14, 2010, the CICA has prescribed GAAS to be the new Canadian Auditing Standards (CAS). CAS were developed based on International Standards on Auditing developed by the International Auditing and Assurance Standard Board. Canadian standards changed to enable Canadian auditors to carry out consistent and comparable audits using standards that are accepted internationally. The adoption of international auditing standards eliminates the need for Canada to maintain its own separate set of standards. International standards have recently been upgraded and are high quality, clear and understandable. More than 100 countries have already adopted these standards or are in the process of doing so.

Effects on our audit approach: As a result of adopting CAS, some aspects of our audit approach changed for our audit of the summary financial statements. A significant change was required by the standard for Group Audits – CAS 600. This standard applies whenever an entity has a "component" which prepares its own financial information. In the case of our audit, all of the entities consolidated in the summary financial statements are considered components – there are over 150 separate components. CAS provides guidance to focus our audit work on the most significant components – these are the components where the highest risk of material misstatements exists. Through the improved documentation of the risks related to the components, we were able to identify the risks better and direct our efforts to the riskiest areas. Our communications with the auditors of the components increased as we worked together to ensure audit work done on the entity's financial statements would address risks identified through our Public Accounts audit.

Other effects from new CAS included a change to our audit report date and an increase in work performed on accounting balances that include estimates from management.

Changes to the Auditor's Report: In addition, there have been several changes to the Auditor's Report due to the implementation of CAS. It has changed to a 6 paragraph report (with 2 optional paragraphs), compared to the previous 3 paragraphs. The report is more explicit with regards to responsibilities of management and the auditor. The report may include 2 additional sections for "Emphasis of Matters" and "Other Matters":

Emphasis of matters paragraph (optional)

- Must relate to a matter already disclosed or presented in the notes to the financial statements

- Auditor believes the importance of the issue should be emphasized for users
- Not a qualification (does not affect the financial statement opinion) – the auditor must clearly indicate this.

Other matters paragraph (optional)

- For a matter other than those that are presented and disclosed in the financial statements
- In the auditor's judgment, the matter is relevant to the users' understanding of the audit
- An "other matter" is not a qualification (does not affect the financial statement opinion).

There were no emphasis of matters or other matters paragraphs in our audit report on the summary financial statements for the year ending March 31, 2011. We did include emphasis of matter paragraphs on our opinions for the other financial reports issued in conjunction with the Public Accounts (the audit of the Fiscal Stabilization Account, the Debt Retirement Account, and the Public Sector Compensation Disclosure Report). These emphasis of matter paragraphs drew attention to the basis of accounting used and highlighted the restricted use of these statements.

2. Understanding the Province's financial reporting

2.1 Why Public Sector Accounting Standards?

The Province follows the accounting standards set by the Public Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants (CICA). PSAB has 12 board members who are appointed as individuals, not as representatives of governments. Task forces are created to address specific issues. The Board and task force members include government representatives (including Deputy and Assistant Deputy Ministers of Finance and Municipal Affairs, comptrollers, legislative auditors and budget directors) and municipal treasurers and auditors, but also include academics, bond-raters and other experts in government accounting and auditing.

The PSAB standards are a high quality set of accounting standards designed specifically to meet the needs of the users of government's financial statements. The accounting standards are set nationally and developed using a rigorous process that encourages input from all stakeholders. New standards or changes to existing standards are first proposed by the PSAB. Exposure drafts are then made public and stakeholders are invited to send comments on the proposed changes. Stakeholders include governments, auditors, and the users of government financial statements. This process creates fair, reasonable standards that will allow for consistent reporting of governments across Canada to allow for comparison and evaluation of results. The process helps to eliminate arbitrary selection of rules.

Before PSAB standards were used, there was more flexibility for governments to set financial reporting standards based on politically motivated reasons – having one set of national standards allows for unbiased standardized reporting.

2.2 What are the Summary Financial Statements?

The summary financial statements reflect the financial position and annual results of all organizations in the government reporting entity (GRE). The GRE consists of government departments, special funds and all organizations the Province controls. Public sector GAAP defines control as the power to govern the financial and operating policies of an organization. The list of organizations in the GRE is in Schedule 8, pages 108-111, of the *2011 Annual Report*. The organizations in the GRE include Government Business Enterprises (GBEs), public schools, government not-for-profit organizations, and other government organizations.

GBEs generate their revenues by selling goods or services. Their operations are self-sustaining—they do not rely on government funding. The GBEs are Manitoba Hydro-Electric Board (Hydro), Manitoba Public Insurance (MPI), Workers Compensation Board (WCB), Manitoba Liquor Control Commission (MLCC), and

Manitoba Lotteries Corporation (MLC). The accounting for GBEs is significantly different from all of the other organizations, reflecting their self-sustaining nature.

Under PSAB standards, a summary reporting model is the only appropriate reporting model for governments. PSAB provides the following discussion on the importance of a summary reporting model in its publication, *20 Questions About the Government Reporting Entity*:

> *"How a government chooses to deliver its services should not significantly alter the financial information it reports. It is a fact governments differ in the way they choose to provide some programs even though the actual programs are essentially similar in nature. For example, one government may choose to manage a licensing function through a department while another may choose to establish a separate board for that purpose.*
>
> *Although many government organizations prepare their own financial statements, individually those statements can provide only a fragmented view of the overall activities of their host government. Without summary financial statements, it is impossible to get a complete picture of the government's overall activity, whether for decision making purposes or for demonstrating accountability for the resources provided by, and managed on behalf of, the resource providers. One cannot determine if these individual organizations are actually part of that government.*
>
> *If an organization that should be part of government is accounted for outside a government's reporting boundaries:*
>
> - *The revenues and expenses of that activity will not be reported in the government's financial statements, therefore understating the total revenue-raising and costs of government programs.*
> - *Assets and liabilities attributable to the excluded organization will not appear in the government's financial statements, thereby understating the assets and liabilities.*
> - *Advances between the organization and the government will be treated as assets and liabilities by both, thereby overstating these amounts. Yet, in reality, the government is merely lending money to one of its component parts and will end up repaying itself. Similarly, if a person transfers money from one of his pockets to another, he is not better or worse off.*
>
> *A government's summary financial statements provide an accounting of the full nature and extent of its financial affairs and resources, including those of its agencies and enterprises. Summary financial statements are a*

> *key element of government financial reporting because governments use them to report on how they managed their financial affairs and resources at an overview level.*
>
> *Summary financial statements recognize that, even though a government and its organizations may be separate legal or organizational entities, together they make up a single economic unit. Consolidation ensures that the financial statements reflect only transactions and balances with third parties. Providing consolidated information helps users gain an overall understanding of a government's assets and liabilities, revenues and expenses and cash flows."*

2.3 Financial reporting model for summary financial statements

The reporting model for the summary financial statements prescribed by the Public Sector Accounting Standards Board includes five key elements: net debt, accumulated surplus or deficit, annual surplus or deficit, change in net debt for the year, and cash position and cash flow for the year. Each element helps users understand how the government managed its financial resources for the year, plus its year-end financial position. The following discussion refers to page numbers in the 2011 Annual Report.

Net debt is calculated as total liabilities less financial assets (financial assets are assets which can be used to pay off liabilities); Net debt represents the future revenue requirements needed to pay for existing liabilities (past transactions and events). Net debt is an important indicator of the government's financial condition. Net debt of $12,837 million (2010 - $11,810 million) is reported in the Consolidated Statement of Financial Position on page 73 of the *2011 Annual Report.*

It is important to distinguish net debt from total borrowings and borrowings as reported in the Consolidated Statement of Financial Position. Total borrowings represents all debt issued, including debt issued on behalf of Hydro and any debt the Province has bought back to hold as sinking fund investments. Schedule 4 on page 103 of the *2011 Annual Report*, illustrates how debt issued on behalf of Hydro and sinking fund investments are then deducted from total borrowings in determining borrowings for the Consolidated Statement of Financial Position. Debt issued for Hydro is also reflected in Schedule 3 to the summary financial statements shown on page 102 of the *2011 Annual Report.*

Figure 1 illustrates how borrowings, as reported on the Consolidated Statement of Financial Position, compares to total borrowings and distinguishes net debt from borrowings.

Figure 1: Borrowings and Net Debt (in $ millions)

	2009	2010	2011
Total Borrowings (includes Debt Issued on behalf of Hydro)	$ 23,324	$ 25,101	$ 26,273
(Less) Debt Issued on behalf of Hydro included in Total Borrowings	(7,836)	(8,289)	(8,467)
(Less) Debt Adjustments[1]	(597)	(701)	(686)
Borrowings as reported on the Statement of Financial Position	**$ 14,891**	**$ 16,111**	**$ 17,120**
Add Other Liabilities[2]	5,519	5,341	5,429
(Less) Total Financial Assets[3]	(8,942)	(9,642)	(9,712)
Net Debt	**$ 11,468**	**$ 11,810**	**$ 12,837**

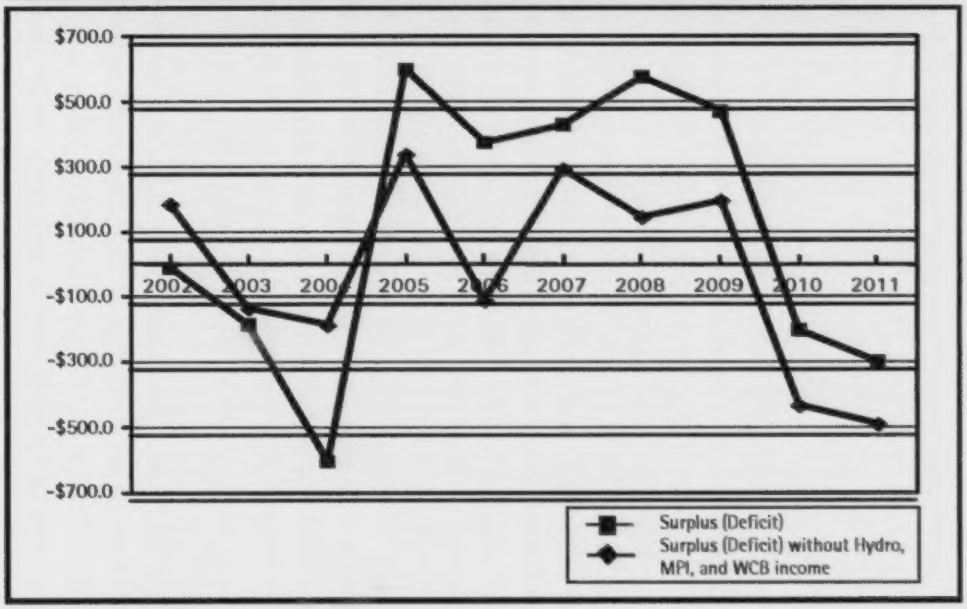
1. Debt adjustments include: unamortized debt issue costs; unamortized foreign currency fluctuations; unamortized gains/losses on derivative contracts; and, debentures issued by the Province that are subsequently repurchased (or held) by the Province as investments.
2. Other liabilities include: accounts payable, accrued charges, provisions, unearned revenue and pension liability as reported on the Statement of Financial Position.
3. Financial Assets are assets that could be used to discharge existing liabilities or finance future operations.

The accumulated surplus or deficit represents the difference between the government's total assets and total liabilities. Accumulated deficit reflects the government's entire net economic shortfall. It means that the government's liabilities are greater than their assets and that the government has been financing their annual operating deficits by borrowing. It also reflects the sum of all the annual surpluses and deficits ever reported by a government. The accumulated deficit - $4,503 million (2010 - $4,374 million) of the Province is shown on the Consolidated Statement of Financial Position on page 73 of the *2011 Annual Report.*

The annual surplus or deficit represents the difference between total revenues from operations during the year and total expenses (costs) incurred during the year. It indicates whether a government has raised sufficient revenues to pay for its expenses for that fiscal year. The expenses reported include the cost of using existing and new capital assets which is referred to as amortization expense. If revenues equal expenses then a government is considered to have maintained its net assets (there is no increase in the accumulated deficit). The annual deficit for 2010/11 is shown as a net loss for the year of $298 million (2010 - $200 million) on the Consolidated Statement of Revenue and Expense on page 74 of the *2011 Annual Report.*

The annual deficit includes the net income generated by GBEs as revenue. The net income recorded by GBEs is presented on schedule 3 on page 102 of the *2011 Annual Report*. The net income generated by MLCC and MLC is normally transferred to government departments to pay for public programs. However, the net income generated by Hydro, MPI, and WCB is normally retained by those entities to finance their future operations. As such, this revenue is not expected to be used to finance other current or future programs of the Province. Calculating the impact of removing this revenue from the annual deficit may provide useful information to users of the summary financial statements. A 10 year graph is provided below (**Figure 2**), illustrating the annual surplus (deficit) as reported in the Consolidated Statement of Revenue and Expense, and for comparative purposes, the annual surplus (deficit) is presented less the net income (loss) of Hydro, MPI and WCB.

Figure 2: Annual surplus (deficit)



Source: Province of Manitoba Summary Financial Statements 2002 - 2011

The change in net debt for the year represents the extent to which sufficient revenues were raised during the year to support government spending for both operating and capital purposes. The level of net capital spending may also be compared to the planned (budgeted) level of capital spending. An increase in net debt indicates that more future revenues will be required to pay for past transactions. The Consolidated Statement of Change in Net Debt is on page 76 of the *2011 Annual Report*.

The cash position and cash flow provides information on how the government has managed its cash during the year and its sources of cash flow and use of cash resources through operating, investing and financing activities. It also highlights net capital spending and how cash was used to acquire capital assets. The Consolidated Statement of Cash Flow is on page 77 of the *2011 Annual Report*.

2.4 Continuing the move away from reporting on core government

In 2005, the Province made a commitment to fully implement Summary Reporting for both budgeting and reporting purposes, including the requirements of GAAP. This commitment included changing the focus of its financial reporting from the Province's Operating Fund (core government) to reporting on the entire GRE on a basis compliant with PSAB standards.

For the next 3 years the Province continued to issue both core government financial statements and GRE summary financial statements. While core government financial statements were included, the Province attempted to put a greater prominence on the summary financial statements. In 2008/09, after a change in balanced budget legislation, the Public Accounts presented only the summary financial statements for the GRE.

However, to assist readers who had previously used core government financial statements, the Province included a schedule in the summary financial statements which reconciled the core government results to the summary results. The Province has continued to include this reconciliation. This year, the Province included Schedule 10 the Summary Financial Statements Consolidated Details Reconciliation to Core Government Results on page 114 of the *2011 Annual Report*.

The accounting policies used to record transactions in the core government are not in accordance with PSAB standards. Schedule 10 notes that

> *"...the Core Government is a component of the Government Reporting Entity and represents the revenues directly reported and the programs and services delivered by government departments. Core Government results are based upon specified accounting policies which vary from Canadian generally accepted accounting principles, in that the results for the year do not reflect the expenses related to the increase in the overall pension liability, do not consolidate the operations of all Crown organizations, include results of the Finance category of government business enterprises only and account for capital financing to health care facilities as a deferred charge. In addition, starting in 2008/09, certain loans and advances to Crown organizations, repaid through future appropriations, were reflected as assets of the Core Government. Public sector accounting*

> *standards would require these advances to be expensed as grants in the year issued."*

As part of the consolidation process, all transactions in the core government are conformed to PSAB standards. As a result, the final amounts presented in the summary financial statements are in accordance with PSAB standards.

While Schedule 10 reconciles the core results to summary results, the core results do not comply with PSAB standards; therefore, we feel that the continued inclusion of core government results is misleading. Although Schedule 10 explains the limitations of core numbers, the adjustments necessary to reflect complete and accurate results are significant. Readers may make inappropriate decisions based on incomplete or misunderstood information presented as the core results.

Furthermore, we feel that the core government results are not representative of the government's performance – for example the Province can choose to move a program from a department to an agency or board and affect the core financial statement figures when there was no substantive change but only an administrative change. Reporting on a summary basis eliminates the transactions between the core government and agency and only reports the revenue and expense incurred by the agency.

> **Recommendation 1:** We recommend that the Department of Finance remove Schedule 10 and all references to core government from the audited summary financial statements.

2.5 Framework of financial reporting for entity level and summary financial statements

The summary financial statements are prepared in accordance with PSAB standards.

As required by PSAB standards, the revenues, expenses, assets and liabilities of all organizations in the GRE (except GBEs) are fully consolidated into the government's summary financial statements.

GBEs are different from other organizations in the GRE because they are financially self-sustaining. This means they will experience annual profits and in some cases losses; but over the long-term, operate with the ability to maintain their operations and meet their liabilities without relying on government funding. GBE financial results are reflected in the summary financial statements on the modified equity basis of accounting.

Under the modified equity basis of accounting, GBE net income is reflected on a single line in the Consolidated Statement of Revenue and Expense (p.74 of the

2011 Annual Report) and GBE equity (assets minus liabilities) is reflected on a single line in the Consolidated Statement of Financial Position (p.73 of the *2011 Annual Report*). This accounting reflects the unique accountability relationship between the Province and the GBEs. A GBE is recorded as a financial asset of the Province because a GBE can generate surpluses that may be available for the Province to use.

Under the modified equity method (unlike the full consolidation method) transactions between GBEs and the rest of the GRE are not eliminated on consolidation. And GBE equity and net income are not restated to conform to the government's basis of accounting for inclusion in the summary financial statements.

The net income and financial position for each GBE is reflected in Schedule 3 to the summary financial statements (p.102 of the *2011 Annual Report*). The net income (loss) for each GBE is presented in **Figure 3**.

Figure 3: GBE Net Income (loss) (in $millions)

Government Business Entity	2010	2011
Hydro-Electric Board	$ 163	$ 150
Workers Compensation Board	(18)	64
Manitoba Public Insurance Corporation	86	(22)
Manitoba Liquor Control Commission	233	250
Manitoba Lotteries Corporation	306	332
	$ 772	$ 775

Source: Audited financial statement of each GBE

The majority of organizations in the GRE prepare their entity-level financial statements in accordance with the CICA Accounting Handbook which includes accounting standards for both profit-oriented enterprises and not-for-profit organizations. School divisions prepare their entity-level financial statements in accordance with PSAB standards. Each set of standards reflects the user needs at the entity level for this wide variety of organizations under the government's control. Within the next two fiscal years all the entities in the GRE, other than GBEs will be moving to PSAB Standards. However, government not-for-profit organizations will continue to apply some of the unique standards currently used by not-for-profit organizations.

When the summary financial statements are prepared, the information from each organization, except for GBEs, is converted to PSAB standards to show the overall results for the Government of Manitoba on one consistent basis. Meeting all of the users' needs with more than one set of standards in the public sector adds complexity to the preparation of both the entity level and summary financial statements. When the entities within the GRE move to PSAB standards, there will be more consistency between entity financial statements and the summary financial statements.

A significant change in accounting standards now underway is the move to International Financial Reporting Standards (IFRS) for publicly accountable enterprises in Canada, which will include GBEs. This change and its future impact on the summary financial statements are discussed in the next section of this report.

2.6 Financial reporting by organizations within the GRE

2.6.1 Changing standards

The accounting and auditing environment has been going through many changes in recent years to move towards a better model. As discussed in section 1, new Canadian Auditing Standards have been adopted based on international standards. Accounting standards and frameworks have also been changing in recent years. Outside of the public sector there are now two separate sets of standards for profit oriented companies to use. International Financial Reporting Standards (IFRS) are now used by publicly accountable entities. These standards have increased disclosure requirements and will allow for comparability of performance across national borders in this global economy. Non-publically accountable businesses in Canada are now using Accounting Standards for Private Enterprises (ASPE). These standards have less disclosure requirements to recognize the different position and needs of users of private companies' financial statements.

In the past, organizations within the GRE that were not considered not-for-profit organizations (NPO) used the same accounting standards as profit-oriented entities. The change in accounting standards in Canada now has triggered a change in required frameworks for entities under government control. In addition, reporting under PSAB will better highlight performance for these entities that will not have the same objectives as entities not under government control.

Entities within the GRE are now classified into one of three categories:

- **Government Business Enterprise** (GBE): An entity that sells goods or services to users outside of the government organization and is able to maintain its operations and extinguish its liabilities without assistance from the government.
- **Government Not-For-Profit Organization** (GNFPO): An organization that operates primarily for social, educational or other not-for-profit purposes, and that has counterparts outside the public sector.
- **Other Government Organization** (OGO): All other entities controlled by the government that are not considered GBEs or GNFPOs.

2.6.2 GBEs must adopt IFRS

As we have noted, Canadian accounting standards for publicly accountable enterprises are converging to meet International Financial Reporting Standards (IFRS). PSAB has decided that all GBEs are publicly accountable and must therefore adopt IFRS for their financial reporting periods starting January 1, 2011.

In Manitoba, all five GBEs have been preparing for the transition to IFRS. That includes assessing the main differences between IFRS and Canadian GAAP (which they currently follow), and identifying and analysing the specific accounting policies, financial disclosures, and underlying financial information to decide what changes will be required to meet the IFRS financial reporting requirements. All GBEs, except Hydro, will convert to IFRS for financial reporting periods beginning on or after January 1, 2011. Hydro will adopt IFRS on April 1, 2012 because it follows rate-regulated accounting policies. The CICA has given organizations that use rate-regulated accounting an extra year to move to IFRS because international standards are still evolving in this area.

Some main areas where IFRS is likely to impact financial reporting by GBEs are as follows:

Financial statement presentations: There will be changes in the format and appearance of financial statements presented under IFRS.

Expanded financial statement note disclosures: IFRS requires more note disclosure around financial statement items. It also requires more disclosure of areas where significant professional judgement has been exercised by management and significant assumptions used to prepare the financial statements.

Depreciation of property, plant and equipment (capital assets): IFRS requires component accounting while Canadian GAAP used to permit accounting and depreciation of the asset as a whole. In addition, IFRS requires overhead and administration costs to be expensed rather than capitalized as part of property, plant and equipment, which was permitted under Canadian GAAP.

Broader recognition criteria for liabilities: Under IFRS, in addition to recognizing legal liabilities, organizations have to assess if they have constructive liabilities— which should be recorded in the financial statements. A constructive liability exists when an organization may not have a legal liability, but may have created a valid expectation by third parties that it will pay to settle a past transaction or claim, so that it has lost its discretion to avoid settlement. Existing Canadian GAAP has the concept of constructive liabilities but has little guidance on this concept and such items are seldom recognized. Items that only needed to be disclosed in a note under Canadian GAAP might have to be recorded as an expense and a liability under IFRS.

Rate-regulated accounting: Canadian GAAP currently permits organizations whose rates to customers are regulated to account for transactions and events differently than organizations who are not subject to rate regulation. Rate regulated organizations can record regulatory assets and liabilities which otherwise would not meet the GAAP definition of assets and liabilities. The intent is to recognize that an organization's costs of delivering a regulated service product will be recovered not only through current, but also future, rate increases.

Hydro currently uses rate-regulated accounting. The prices charged for the sale of electricity and natural gas within Manitoba are subject to review and approval by the Public Utilities Board of Manitoba. The rate-setting process is designed such that rates charged to electricity and natural gas customers recover costs incurred by Hydro in providing electricity and gas service. Accordingly, Hydro applies various accounting policies that differ from enterprises that do not operate in a rate-regulated environment. These accounting policies allow deferral of certain costs and credits that will be recovered or refunded in future rates. Otherwise, these costs and credits would have been included in calculating net income in the year that the cost or credit was incurred. Hydro calls these deferred costs and credits "regulatory assets" or "regulatory liabilities". At March 31, 2011, Hydro had $309 million of regulatory assets.

IFRS does not permit the use of regulatory accounting, but the International Accounting Standards Board (IASB) is now reconsidering this position. Consequently, the CICA has given rate-regulated enterprises a one-year extension to adopt IFRS. As a result, Hydro will adopt IFRS for the fiscal year starting April 1, 2012. At this time it is uncertain what position if any the IASB will take to address accounting for rate-regulated activities.

Impact of IFRS on summary financial statements

As previously noted, GBEs' financial results and financial position are not conformed to the government's accounting policies but the summary financial statements pick up their net equity and annual net income. Any changes which result from GBEs' conversion to IFRS will flow through and be reflected in the Province's annual results and financial position.

2.6.3 GNFPOs moving to PSAB standards

PSAB has decided that all government organizations other than GBEs will converge to PSAB standards for their external financial reporting.

PSAB has approved including existing not-for-profit accounting standards from the CICA Handbook in the public sector accounting handbook. These accounting standards cover transactions and events most common to not-for-profit organizations such as accounting for revenue from contributions for capital and operating purposes. For all other business transactions, GNFPOs will use the rest of the public sector accounting handbook for guidance.

GNFPOs may consequently account for things differently than other not-for-profit organizations that do not use PSAB standards for financial reporting. For example post retirement benefits and pension costs may be accounted for differently.

In Manitoba, GNFPOs have to adopt PSAB standards for the fiscal year beginning April 1, 2012.

2.6.4 OGOs moving to PSAB standards

All government organizations other than GBEs and GNFPOs are called "other government organizations" (OGOs). For the most part, they will follow PSAB standards, unless IFRS better meets an organization's financial reporting needs. OGOs must adopt public sector accounting standards for fiscal years beginning on or after January 1, 2011.

The Department of Finance has been working with government organizations to help them validate their current classification as government not-for-profits or other government organizations and to assist them with the transition.

2.7 Presentation of pension obligations in pension plan financial statements

The Province's liabilities for pensions are recorded in the summary financial statements but the pension plans themselves are not considered to be part of the GRE. Manitoba public sector pension plans issue financial statements using Canadian Institute of Chartered Accountants (CICA) accounting standards for pension plans as their basis for external financial reporting. These accounting standards are changing. The CICA approved the new Section 4600 - Pension Plans effective for years beginning on or after January 1, 2011.

The most significant change will be the requirement that the Statement of Financial Position include both the net assets available for benefits and the pension obligation associated with the plan (both the employer's and the pension plan's portion). The difference (surplus or deficit) between net assets and the pension obligation will also be required to be reported on the Statement of Financial Position. Previously, the pension obligation and surplus or deficit was only reported in the notes to the financial statements.

2.8 Changes in The Civil Service Superannuation Act

Amendments to *The Pension Benefits Act* and *Pension Benefit Regulation* came into effect on May 31, 2011. The Pension Commission required that all pension plans make amendments to meet the new requirements and that the amendments must be filed by December 31, 2011. Accordingly, *The Civil Service Superannuation Act* (Act) was amended to address the inconsistencies between the Act and amendments to The *Pension Benefits Act* and to enact other changes. One of the other changes to the Act was to remove the specific requirement for the Auditor General to audit the financial statements of the Civil Service Superannuation Fund. The Act expands this to allow any independent auditor to audit the financial statements of the Civil Service Superannuation Fund.

2.9 Other sources of information on the Province's finances

In addition to the summary financial statements, there are several other information sources produced by the Department of Finance. These include:

- Financial Statement Discussion and Analysis
    - Financial Highlights from the summary financial statements
    - Financial Condition of the Government – a review of financial indicators as recommended by the PSAB. Indicators are looked at in three categories: Sustainability, Flexibility, and Vulnerability. Using indicators as recommended by the PSAB allows for comparability across provinces. We noted this year that the Province does not look at any indicators that use borrowings, or total liabilities in their analysis and instead relies on indicators that look at net debt (total liabilities less financial assets). PSAB does recommend several sustainability indicators that use total liabilities as the base, but the Province has chosen to use other indicators for sustainability. In addition, some other provinces look at additional indicators other than those recommended by PSAB and will look at things such as borrowings per capita and borrowings as a percentage of GDP. These indicators might be a useful addition to the Province's current analysis.
    - Variance analysis and assessment of significant trends – for revenues, expenses and account balances

The Financial Statement Discussion and Analysis is released as part of the Annual Report included in Volume 1 of the Public Accounts along with the summary financial statements.

- Volume 3 of the Public Accounts
  - a reconciliation of core government results to summary financial statement results (unaudited)
  - the details of selected core government account balances information (unaudited)
  - the details of core government revenue and expenses (unaudited)
  - financial information provided under *The Financial Administration Act* and other legislation (includes reports that are audited and unaudited).

We have noted that the contents of Volume 3 have not changed significantly since the Province moved to a summary financial reporting model. The information included in Volume 3 may no longer be the most relevant information the Province could be producing. For instance the details of core government account balances do not reconcile to the account balances included in the summary financial statements. While we recognize the value in comparing the core actual figures to those in the budget voted on by the Legislature, the amount of core information provided may be excessive and in other cases insufficient. It may be more appropriate to include details of information on a summary level to help users better understand the balances in the summary financial statements.

In addition, some of the reports required under legislation may no longer be relevant now that the focus of the financial reporting is on a summary basis.

Recommendation 2: We recommend that the Department of Finance revise the information included in Volume 3 to provide relevant information to users that is consistent with the summary financial statements.

- Unaudited Quarterly Reports

For the first three quarters of each fiscal year the Province releases an unaudited quarterly report. These quarterly reports contain:

- A forecast to the year-end based on the most current information compared to original budgeted figures for the summary reporting entity. The summary information is at a high level and only includes totals for Total Revenue and Total Expenditures and does not breakdown the forecast on a more detailed level
- The actual year-to-date results compared to those forecasted by the budget and to the prior period comparative results for the

summary reporting entity. These results are reported in more detail breaking down total revenues and expenses to the same categories as in the financial statements

  - Information on the Province's capital asset and infrastructure spending, borrowings, guarantees and obligations, and special accounts
  - Detailed schedules of core government revenue and expenditures – the level of detail is greater than that included in the summary financial statements. The schedules present actual, estimated, and prior year comparative figures.

- Financial Management Strategy Report on Outcomes

  This is a report issued no later than September 30 each year. This includes the report on the outcomes of the Financial Management Strategy (FMS) which is included each year in the provincial budget. As disclosed in the Report on Outcomes for the year ended March 31, 2011, the annual FMS sets out the government's priorities for financial management, one or more measurable outcomes for each priority area, and objectives for each measurable outcome for the current year and for the future. The Report on Outcomes follows up on these outcomes and reports on the Province's performance.

3. Matters arising from our audits

3.1 Sick leave liability

During our audit of the summary financial statements we noted that the Province does not record a liability for their non-vesting sick time benefits. The Province provides sick time benefits for employees which accumulates on a bi-weekly basis as employees provide service to a maximum accumulated benefit of 208 days. The benefit is non-vesting meaning if it is not used before an employee leaves the employment of the Province there is no further obligation on the Province's behalf.

Sections PS3255.15 - .20 of the PSAB Handbook, require that a liability be recognized for post-employment benefits and other compensated absences. This includes a liability for sick time benefits that accumulate but do not vest, which is the nature of the majority of the Province of Manitoba sick time benefits. To date the Province has not reflected a liability for these benefits in the summary financial statements. The Province's argument for not recognizing a liability is that the value of this liability would be immaterial because of the low usage rate of accumulated sick leave beyond what is earned in the same year.

However the Province has not evaluated the amount of this liability using a reliable method. It cannot be determined whether this liability is immaterial (and therefore appropriately excluded from the financial statements) unless a reasonable valuation is made.

> **Recommendation 3:** We recommend that the Province perform a valuation of the non-vested sick time liability to determine whether the current accounting treatment of this item is reasonable.

3.2 Environmental liabilities

The Province records an environmental liability in the summary financial statements. This liability is for contaminated sites where the Government is obligated or likely to become obligated to incur remediation costs due to reasons of public health and safety, contractual arrangements, or compliance with environmental standards. The liability is based upon expected remediation costs determined on a site by site basis measured as incremental direct costs reduced by estimated recoveries from third parties, and discounted where possible to reflect the time value of money.

We identified several issues in regards to the valuation of the environmental liabilities during our audit. First, we noted that environmental liabilities were not being re-valued annually to reflect the time value of money. When liabilities are recorded, they are discounted to their present value. However, each year they should be re-valued to reflect the passage of time (and therefore an increase to the liability). Our second observation was that liabilities for sites estimated by the Province do not include a margin of error in the calculation. Some liabilities for sites were estimated by third party professionals and their estimates included a margin of error. We also noted that there are other factors which can impact the valuation over time, such as improvements in technology or new information on the condition of the site.

> **Recommendation 4:** We recommend that the Province revalue its environmental liabilities each year to reflect known changes in the liability including the impact of the passage of time, interest rates and an appropriate margin of error.

3.3 Non compliance with legislation – Civil Service Superannuation Fund

During the year ended December 31, 2009, senior management of the Civil Service Superannuation Fund (the Fund) became aware that there was a potential issue regarding the calculation of pension payments for a specific number of pensioners. The Fund halted the payment of additional pension payment amounts for those persons potentially affected until the issue could be investigated and resolved.

During the year ended December 31, 2010, the Fund concluded that, due to a misinterpretation of a section of *The Civil Service Superannuation Act* by the Fund, 44 pensioners had been overpaid pensions over a period from 2002 to 2009. The total amount of the overpayment was approximately $450,000. The overpayment affected plan members who had reached the 70% maximum pension earnings following the 2000 amendment of *The Civil Service Superannuation Act*.

The Board of the Fund decided not to attempt to recover the overpaid amounts. The Fund has corrected the error on a go forward basis.

3.4 Wage accruals documentation and review – Manitoba Health Services Insurance Plan

Manitoba Health Services Insurance Plan (the Plan) provides funding to Regional Health Authorities (RHAs). As part of the process in determining the funding to RHAs, the Plan estimates the amount of funds owing to the RHAs for wage settlements for the various unions. The settlements for wage standardization and other negotiated benefits have become increasingly more complex and challenging to administer. This is further intensified by the prolonged periods between the time the settlements are negotiated and the funds are paid out.

This has resulted in challenges for the Plan in maintaining adequate and timely information that supports the completeness and accuracy of payments made for wage settlements.

During the year ended March 31, 2011, we noted an over accrual of $5 million for wage settlements payable to RHAs due to errors in applying payments already made against calculation of the payable. We also noted an over accrual of $7 million for wage settlements payable to RHAs due to a disagreement on the methodology for determining the accrual. Neither of the adjustments were made in the Plan or the summary financial statements.

3.5 Continuing operations – Leaf Rapids Town Properties Ltd.

The closure of the Ruttan Mine in May 2002 created doubt that Leaf Rapids Town Properties Ltd. can operate as a going concern and be able to realize its assets and discharge its liabilities in the normal course of business.

The company was able to acquire funding from the Province of Manitoba over a four year span starting in the March 31, 2008 fiscal year that secured the financial viability of the company for the time being. However, this is not a long term solution to the continuing operations of the company and further action is now required.

3.6 Incorrect discounts applied to some driver premiums – Manitoba Public Insurance

MPI under charged premiums to 3,274 people by incorrectly applying a discount in the assignment of the new Driver Safety Ratings (DSR) between August and October 2010.

Subsequently, MPI decided not to seek recovery of the unpaid fees from customers affected, but did correct the error on a going forward basis. The total forgone revenue to MPI was approximately $482,000.

3.7 Information technology

To support many of our direct annual financial statement audit opinions, we gain an understanding of controls significant to financial reporting. Computer programs and applications operate in a computer environment. The controls over the computer environment are called Information Technology General Computer Controls (ITGCs). A well-controlled computer environment provides assurance that the programs and applications are functioning properly.

Observations within internal Information Technology (IT) management letters are driven by our ITGC work in support of the annual financial statement audits. Here are some significant exceptions we noted within our IT management letters.

The exceptions noted below are only from financial statement audits performed directly by our office, not from audits within the Government Reporting Entity performed by agent and external auditors.

3.7.1 Formal IT risk assessment process

Many risks faced by organizations relate to information held in or processed by IT systems. Understanding these risks through an IT risk assessment, an organization can use safeguards to reduce them to an acceptable level. Ultimately, responsibility for IT risk management lies with the system, business process, and data owners. Such owners and relevant stakeholders should agree on levels of IT risks, mitigation strategies, and accepted residual risks.

IT related risks often include security, confidentiality, data and system processing integrity and availability. Generally, IT risk assessments cover the following:

- Technology (hardware and software)
- Security of assets (physical and logical)
- Policies, standards, guidelines and procedures
- Legal and regulatory requirements (data retention, privacy requirements)
- Loss of key personnel.

IT risk management should be fully integrated with overall, organization-level, risk management processes. Without a formal IT risk assessment process, an organization may be unaware of existing risks and may not have effective mitigating strategies.

While we report the following exceptions noted in our financial statement audits, we urge all organizations within the GRE to consider the need to implement comprehensive IT risk assessment processes.

Manitoba Health Services Insurance Plan

The Manitoba Health Services Insurance Plan (MHSIP) is managed by the Department of Health to administer Provincial drug programs, payments to medical practitioners, and other health related services, including the Regional Health Authorities. While IT processes within the Province have been consolidated under the Department of Innovation, Energy and Mines through Business Transformation and Technology (BTT), Manitoba Health remains separate. The Information Systems Branch (ISB) manages and supports IT within the Department of Health.

The Department of Health lacks a formal IT risk assessment process.

University of Manitoba

IT processes at the University of Manitoba (U of M) are managed internally by Information Services and Technology. U of M Internal Audit Services, facilitated by a third party, conducted an IT risk assessment in 2009.

The review identified and prioritized areas of risk based on likelihood of occurrence and potential impact on University objectives. However, the assessment did not consider or define risk mitigating controls and strategies.

University of Winnipeg and University College of the North

IT processes at the University of Winnipeg (U of W) and University College of the North (UCN) are both managed internally within their respective organizations. Both Universities lack formal IT risk assessment processes.

Public Accounts

In our 2010 Report to the Legislature, we noted that BTT lacks a formal IT risk assessment process.

BTT contracted a third party to facilitate the development and implementation of an IT risk assessment process in April 2010. During the year, BTT's Senior Management Committee approved the IT risk assessment process and began utilizing the process in some areas. Although we consider the prior year's recommendation as implemented, we did not assess the documented risk details and mitigation strategies.

> **Recommendation 5:** We recommend that MHSIP, U of M, U of W and UCN implement a comprehensive IT risk assessment process.

3.7.2 Formal IT security policy

An IT security policy is an essential part of a successful IT security program. The single greatest threat to information security is the lack of awareness and understanding of the risks in the IT environment. Senior management approval, end-user education, and a general awareness of IT security policies and standards are essential to the success of IT security practices. IT security should be a joint responsibility between IT service providers and business stakeholders.

An IT security policy should support efficient and effective security practices in order to maintain the integrity of systems and data. The policy should include a statement of direction from an appropriate authority, supporting the goals and principles of IT security. This policy should outline the minimum security requirements for protecting the confidentiality, integrity, and availability of IT systems and the data they hold. It should clearly define roles and responsibilities for IT security.

We have the following observations:

Public Accounts

In our 2010 Report to the Legislature, we noted that even though BTT provides supporting IT security policies, standards, guidelines and procedures, many of these documents are outdated or in draft form. This year, the Province approved an IT policy framework for creating and maintaining such documents. However, similar to the prior year, the Province has not yet implemented a formal, comprehensive IT security policy.

Manitoba Health Services Insurance Plan

The Department of Health and the ISB have formally documented some IT security policies and standards; however, they lack a formal, comprehensive IT security policy.

> **Recommendation 6:** We recommend that the Province and Department of Health implement formal, comprehensive IT security policies for their respective areas.

> **Recommendation 7:** We recommend that the Province analyze their IT security policies, standards, guidelines and procedures for completeness and appropriateness.

3.7.3 Disaster recovery planning

Disaster recovery planning pertains to documented processes, policies and procedures used in recovering, and continuing, technology infrastructure critical to an organization. Disaster recovery planning is a subset of business continuity planning that plans to keep certain aspects of critical organizational processes functioning during disruptive events.

Continuity of business operations is highly dependent on the uninterrupted flow of information. Without a formal Disaster Recovery Plan and required resources for recovery, organizations may not be able to continue critical business processes supported by automated systems. Furthermore, uncoordinated recovery efforts between business areas and IT service providers could extend system outages.

Disaster Recovery Plans are owned and driven by key business stakeholders and should be interconnected with documented Business Continuity Plans. Once formalized, continuity plans should be reviewed and tested regularly.

Recovery procedures go beyond data processing hardware and software as organizations need adequate manual procedures to process transactions until computer processing can be restored. However, manual processes, as established through Business Continuity Plans, may not be sustainable for long periods of time as services become increasingly dependent on automated systems and processes.

The Province uses SAP for a significant amount of financial reporting data. More importantly, many critical payments are processed directly from SAP. The Province has not yet developed a formal Disaster Recovery Plan for SAP and if the system were to become unavailable, critical payments may be disrupted. We did not review any business continuity processes that may support critical payments.

> **Recommendation 8:** We recommend that the Province implement a formal Disaster Recovery Plan for SAP.

3.8 Comparing 2010/11 actual year-end results to the budget and 3rd quarter forecast

The 3rd quarter financial report, released by the Province on April 12, 2011, included a forecast of the 2010/11 results compared to the original 2010/11 budget. This forecast estimated a $452 million net loss for the year, an improvement over the original budgeted net loss of $545 million. This is in contrast to the 2009/10 fiscal year where the original budget estimated $48 million in net income and the third quarter report was revised to an estimate of a $555 million loss.

In **Figure 4**, we compare both the original budget and 3rd quarter forecast to the actual results from the audited summary financial statements.

Figure 4: Net income - budgeted, forecasted, actual (millions)

	Budget 2011	3rd Quarter Forecast 2011	Year End Actual 2011
Revenue	12,719	13,130	13,205
Expense	13,264	13,597	13,503
Net Income (Loss)	**(545)**	**(467)**	**(298)**

The actual loss for the year was $247 million better than the loss projected in the budget. The $247 million difference between the original budget and actual results was due to revenues exceeding the budget by $486 million offset by expenses exceeding the budget by $239 million.

Actual revenue exceeded the budgeted amounts for income taxes ($255 million), other taxes ($21 million), fees and other revenue ($190 million), income from GBEs ($76 million), and investment income ($22 million). Federal transfers and shared cost revenue was $78 million less than the budgeted amount.

Actual expenses exceeded the budgeted amounts for health and healthy living ($35 million), family services and consumer affairs ($37 million), community economic development ($153 million), justice and other expenses ($86 million) and debt servicing ($6 million). Education expenses were $78 million less than the budgeted amount.

When the 3rd quarter forecast was prepared, it reflected the year to date actual results and the projected revenues and expenses for the balance of the fiscal year. The total difference between the third quarter forecasted results and the actual for 2011 was $169 million. In 2010, the difference was $354 million. We noted in our 2010 report that the forecast to actual variance could have been reduced if there had been closer scrutiny of information in preparing the 3rd quarter forecast. While we did not analyze the detailed contribution to the 2011 difference, we observed there has been closer scrutiny of the information received by the Department of Finance from the outside organizations.

4. Follow up of prior years' recommendations

Each year, in our report to the Legislative Assembly on the Audit of Public Accounts, we provide recommendations to the Government where we identify opportunities for improvement in financial management and reporting processes.

The status of implementation for our prior years' recommendations is presented in **Figure 5.**

Figure 5: Status of prior years' recommendations

Report	Recommendation	Status
Audit of the Public Accounts for the year ended March 31, 2010	We recommended that the Province implement a comprehensive IT risk assessment process.	Implemented/Resolved A third party facilitated the development and implementation of an IT risk assessment process for Business Transformation and Technology under the Department of Innovation, Energy & Mines for central government.
	We recommended that the Province implement a long-range IT strategic plan.	Work in progress
	We recommended that Business Transformation and Technology, in collaboration with relevant business stakeholders, implement a comprehensive IT security policy.	Work in progress
	We recommended that the Department of Finance review public quarterly reporting requirements for organizations in the GRE and prepare a plan to resolve any inconsistencies.	Work in progress
	We recommended that the Department of Finance review the requirement for the release of 4th quarter reports under The Crown Corporations Public Review and Accountability Act to determine if it is still appropriate.	Work in progress

cont'd.

Figure 5: Status of prior years' recommendations

Report	Recommendation	Status
	We recommended that the Province determine what steps are necessary for an earlier release date of the Public Accounts.	Work in progress
	We recommended that the Department of Finance do a cross-government review to assess the extent to which the Province currently requires supplementary audit reports and work with departments to revise the requirements to be consistent with GAAS while meeting departmental needs.	Work in progress
Audit of the Public Accounts for the year ended March 31, 2007	We recommended that the Provincial Comptroller's Office in collaboration with the CIO's Office ensure that a government wide disaster recovery plan is developed and tested to ensure that critical business functions can be continued by recovering computer processing capabilities in the case of an event which disrupts computer servicing services or facilities.	Work in progress

Response of officials and summary of recommendations

Recommendation 1: We recommend that the Province remove Schedule 10 and all references to core government from the audited summary financial statements.

> ***Response - Finance:*** The Province recognizes the importance of reporting on a summary basis, and agreed with the Auditor General in 2005 to move to Summary Reporting in order to provide readers with a full view of all entities within the government reporting entity. As noted in the Auditor General's discussion in Section 2.4, since 2008/09 the government has presented a single set of summary financial statement for the Government Reporting Entity. Also noted in the discussion is the inclusion of a single schedule (Schedule 10) that helps interested readers compare the results of core government to the estimates presented and approved by the provincial legislature. The note disclosure for Schedule 10 makes clear how the presentation of information differs from PSAB standards. Core government operations represents a significant portion of the summary statements and, like the performance of government business enterprises, is a key component of the overall results in any given fiscal year. It is also the information government most frequently receives questions about from the general public when the Public Accounts are released. In addition, under *The Balanced Budget, Fiscal Management and Taxpayer Accountability Act*, the Province is required to report to the public on core government expenditures and revenues compared to the main estimates of expenditure and revenue tabled in the Legislative Assembly, and believes it is critical to continue to provide this information within Public Accounts. Therefore, the Province is willing to meet with the OAG to discuss other presentation options to ensure that the public has no misunderstandings of the significance of the information presented in Schedule 10.

Recommendation 2: We recommend that the Department of Finance revise the information included in Volume 3 to provide relevant information to users that is consistent with the summary financial statements.

> ***Response - Finance:*** Financial statement users are comprised of groups with a variety of interests and views. The Province agrees that some users find supplementary information on the summary financial statements very useful. But over the years, many users have continuously expressed their desire for detailed information on the balances of the core government.

Of particular significance are the details of the comparison between the actual core results and the budget voted by their elected representatives.

The Department of Finance agrees to take this recommendation under advisement and will also review the practices of other Canadian jurisdictions to determine what changes are appropriate to Volume 3.

Recommendation 3: We recommend that the Province perform a valuation of the non-vested sick time liability to determine whether the current accounting treatment of this item is reasonable.

Response - Finance: The Province agrees with the Auditor General's recommendation. A valuation of the non-vested sick time liability will be performed to determine whether a liability should be accrued in the summary financial statements and the financial statements of the individual entities.

Recommendation 4: We recommend that the Province revalue its environmental liabilities each year to reflect known changes in the liability including the impact of the passage of time, interest rates and an appropriate margin of error.

Response - Finance: The Province agrees with the Auditor General's recommendation. The Province's policy for environmental liabilities is documented in the *Financial Administration Manual* (FAM). The FAM states that environmental liabilities which are discounted to net present value should be re-evaluated each year to reflect the changes for the passage of time. In addition, the year end closing procedures instruct the Departments to use the year end environmental liability checklist to re-evaluate existing liabilities which are discounted to net present value.

Where a range of reasonable estimates are possible, the FAM recommends Departments to use a mid range estimate unless an alternate estimate is viewed as more appropriate.

The Department of Finance will examine what steps can be taken in the future to ensure that Departments properly value their environmental liabilities.

Recommendation 5: We recommend that MHSIP, U of M, U of W and UCN implement a comprehensive IT risk assessment process.

> ***Response - Health:*** MHSIP – the Department of Health has met with the Business Transformation and Technology (BTT) division of Innovation, Energy and Mines, who have begun a similar process on behalf of the centralized IT structure of Government. The intent is to utilize the same external consultant and approach to this initiative in Health to ensure consistency of process and results. Staff within Health has met with BTT and the consultant to review the requirements and are expecting a proposal from the consultant to conduct a similar engagement with Health shortly.
>
> ***Response - Advanced Education and Literacy:*** University of Manitoba, University of Winnipeg and University College of the North – security, confidentiality, system integrity and availability of the IT systems are important considerations to ensure that students and staff can use these systems in a safe and efficient manner. To strengthen the security and reliability of the IT system, the report has recommended that the Universities implement a comprehensive IT risk assessment process. The Council on Post-Secondary Education will encourage the Universities to identify the issues and develop a plan to carry out this important recommendation.

Recommendation 6: We recommend that the Province and the Department of Health implement formal, comprehensive IT security policies for their respective areas.

> ***Response - Innovation, Energy and Mines:*** Business, Transformation and Technology (BTT) recently assigned a full time policy analyst to address BTT policies and is currently reviewing existing policies and directives with a view to develop a gap analysis. BTT's policy analyst will be developing an overall ICT security policy for the consideration of the governance authorities.
>
> ***Response - Health:*** MHSIP – the Department of Health has begun the development of its IT Security policy, and several components have already been drafted and are under internal review.

Recommendation 7: We recommend that the Province analyze their IT security policies, standards, guidelines and procedures for completeness and appropriateness.

> ***Response – Innovation, Energy and Mines:*** Business, Transformation and Technology (BTT) recently assigned a full time policy analyst to address BTT policies and is currently reviewing existing policies and directives with a view to develop a gap analysis. BTT's policy analyst will be developing an overall ICT security policy for the consideration of the governance authorities.

Recommendation 8: We recommend that the Province implement a formal Disaster Recovery Plan for SAP.

> ***Response – Innovation, Energy and Mines:*** BTT completed its centralization of Manitoba's computer environment, Control, Aggregate and Transform (CAT), this past year and has undertaken consultations with several areas of government to determine the best approach for Disaster Recovery Planning on a go forward basis. Awareness sessions were completed this past summer and BTT will now be working with Departments in regards to their DRP requirements. This is a multiyear initiative due to complexities and costs.
>
> BTT has tried to balance audit recommendations with day-to-day pressures of service delivery and more recently the floods throughout Manitoba which put pressures on our Business Continuity and Disaster Recovery planning efforts.

Chapter 2

Appointment Process to Agencies, Boards and Commissions

Executive management
Carol Bellringer
Norman Ricard

Principal
Maria Capozzi

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Appendices

Appendix A: Agencies, Boards and Commissions

Appendix B: Review of Canadian jurisdictions website information on ABCs

Appendix C: Sample Skills/Competency Matrix

Main points

What we examined

The purpose of our audit was to examine the process used to appoint members to Manitoba's agencies, boards and commissions (commonly referred to as ABCs). Our audit objectives were: to determine whether adequate information is available to Manitobans regarding the appointment process; and to determine whether appointments to ABCs are made in a timely manner. We specifically examined the appointment process utilized for the 200 ABCs that are part of the Cabinet Committee on ABCs' process (**Appendix A**). We examined all ABC appointments over a three year period, ending July 2011.

Although the various ABCs differ significantly in size, complexity and level of responsibility, they all report to government through a responsible Minister. Final approval for all government appointments ultimately rests with Cabinet, however the process for recruiting and appointing members to each ABC is led by the responsible Minister, who provides their recommendations to Cabinet for appointments to ABCs within their portfolio.

Why it matters

ABCs fulfill a wide variety of public functions in Manitoba and impact the lives of all citizens no matter where they reside in the province. Government relies on ABCs in a variety of ways: to ensure compliance with government regulations and legislation; to provide adjudication on a wide variety of rights-related decisions; to administer large financial assets; to provide knowledgeable and well thought-out advice; to provide oversight and accountability of public sector organizations; and in some cases, to provide direct public goods and services that may have once been provided by a department.

Given the considerable impact that ABCs potentially have on all Manitobans, it is important that the appointment process be well managed and that appointments be timely. Deficiencies and/or delays in the appointment process could significantly impact the effective functioning of the ABCs. It may even discourage committed, qualified individuals from accepting appointments or renewals of their terms.

Citizens who are appointed to Manitoba's ABCs devote their time, expertise and talents to provide service to the entity. In most cases, individuals serve on these ABCs primarily as a public service to the community, due to their commitment and caring to that ABC and the services it provides their fellow citizens. Often, their service to an ABC is done in their leisure time, with no or modest compensation, even though the time and input required for some ABCs is substantial. Given this, it is important that government value and respect the time and commitment of their appointees, and ensure the appointment/reappointment process allows them sufficient notice to manage their personal and professional affairs accordingly. Sufficient notice regarding new appointments or reappointments is also essential for the ABCs themselves to allow the entities to manage their operations accordingly and prepare briefing materials and orientations for new appointees.

Concerns with respect to the appointment process have been brought to the attention of the OAG in a variety of ways by both current and past members of ABCs. Also, as reported in our 2009 report, *Study of Board Governance in Crown Organizations*, the appointment process was a significant area of concern for both the members and senior management of the 50 Crown organizations that were surveyed. This report is available on our website: www.oag.mb.ca

What we found

Developing a competency-driven appointment process is essential to ensuring qualified members are recruited and retained to serve on Manitoba's ABCs. A competency-driven process is one that not only reflects the diversity and geographic needs of the province, but provides each ABC with the appropriate mix of skills/competencies that are best suited to fulfill its mandate.

Overall, there is a need to improve the timeliness and openness of the appointment process in order to meet modern standards of effective governance. A timely and efficient appointment process is dependent on the focused attention of government Ministers. While understandably Ministers have a number of pressing and critical items vying for their attention, the potential impact of appointment process deficiencies on the effective functioning of the ABC should not be underestimated.

At the onset of our review, there was very limited information on the Government of Manitoba website regarding Manitoba's ABCs and the appointment process. This situation was strengthened in July 2011 with a website link directly from the homepage to improved information on ABCs. Further, the website now allows submissions of applications for consideration to an ABC appointment. This considerably enhances the accessibility and transparency of ABC appointments to Manitobans. Our report notes that there are further enhancements that can be made to the website, including providing a complete list of all ABCs in the province, and information on the administrative process used to make appointments. Further, the site will need ongoing maintenance and a plan to be developed to ensure the information provided on the website remains accurate and up-to-date.

The appointment process as currently conducted is time-consuming and is intended to take approximately 4 months but often takes longer. Recognizing that in a competency-driven process, it takes time to recruit individuals with the appropriate skills/competencies to serve on ABCs, the process should begin sufficiently in advance to ensure that every attempt is made to meet the term expiry.

There should also be enhanced consultation with the ABCs. As the ABCs are in the best position to know the current skills and characteristics that are represented, and what additional skills would best complement that mix to meet the strategic needs of the entity, the ABC Chair and senior management should provide the Minister's office with a skills/competency matrix well in advance of any vacancies or term expiries.

We believe that all appointments should be kept as current and up-to-date as possible. Our audit found that the timeliness of appointments and reappointments needs improvement, as a quarter of all ABC members (25%) are currently serving with expired terms. About 22% of these have been expired for 3 years or more, with the range of expiries going as far back as 2002. Many pieces of legislation allow members to continue to serve past their expiry date, until "he or she is reappointed, the appointment is revoked or a successor is appointed." However, as Order-in-Council appointments generally set a term expiry date, it is arguably not the intent of this legislative clause that members continue to serve with no end date. Acting on term limits are important because it allows for fresh perspective and renewal in the membership of an ABC over time. Further, by not reviewing the appointments and making reappointments on a regular basis, government is not taking advantage of the opportunity to review the functioning of the ABC and make changes that reflect the ABC's current context. This also limits access and opportunities for other Manitobans to serve on that ABC.

There are 55 ABCs (almost 30%) which do not have staggered terms for appointments. Staggering terms ensures that there is an orderly transition of members on an ABC and that not all members leave the organization at the same time, which would undermine the effective functioning of the ABC. Such practices help to balance the ABC's need for continuity and experience, with the need to refresh the membership and bring on new skills/expertise over time to appropriately reflect the challenges faced by the organization.

Our audit found that there are some members who have served on the same ABC for significant lengths of time. In total there are 308 individuals (20%) who have served their ABC for 10 years or more. Of these, 13 have served over 20 years. While terms of service for members must be long enough to gain experience and cultivate sufficient knowledge to understand the ABC, there must also be sufficient renewal of members to bring new perspectives and experience to the ABC. Serving on the same ABC for an excessively long period of time is not reflective of good governance practices, especially for a deliberative ABC. As government may not wish to lose the valuable expertise gained by an individual who has served on an ABC for a significant length of time, there should be consideration to appointing the individual to become a member of a different ABC, where their experience and expertise could be well utilized and of great benefit to the new ABC.

This report includes 9 recommendations to Government to improve the ABC appointment process. We also include items for consideration by each ABC which encourages them to take a proactive approach in enhancing their relationship with Government and in assisting the Minister's office in making timely, competency-based appointments to their ABC.

Background

Governments choose to deliver the myriad of public services for which it is responsible in a variety of ways. While some public services are directly delivered by departments, government may also create various Crown entities to deliver services, including Crown corporations and enterprises, government agencies, funding authorities or granting agencies, adjudicative tribunals or regulatory commissions, and advisory committees and boards. In Manitoba, these agencies, boards, and commissions (commonly referred to as "ABCs") fulfill a wide variety of public functions – from the provision of basic utilities, healthcare, social services and recreational/cultural activities, to the protection of our environment and natural resources, to the administration of justice and ensuring compliance with regulatory matters, and even to providing the opportunity for citizens to participate in advising government on localized issues of public concern. As such, Manitoba's ABCs impact the lives of all citizens no matter where they reside in the province.

A Crown entity is defined as: *"Any agency, board, commission or other body:*

- *That is established by government but is not part of a government department;*
- *That is owned and/or controlled by government;*
- *That is established by a statute and given delegated authority and responsibility;*
- *That may or may not be financially self-sufficient; and*
- *That may or may not derive its revenues from customers or client groups."*

OAG December 2002 report, *Performance Reporting in Annual Reports*

Although the various ABCs differ significantly in size, complexity and level of responsibility, they all report to government through a responsible Minister. Final approval for all government appointments to the ABC ultimately rests with Cabinet, however the process for recruiting and appointing members to each ABC is led by the responsible Minister, who provides their recommendations to Cabinet for appointments to ABCs within their portfolio. For some ABCs, once the Minister's office has identified potential members, the recommended appointments are vetted by the Cabinet Committee on Agencies, Boards and Commissions (Cabinet Committee on ABCs) prior to being put forward to Cabinet for final approval.

The Cabinet Committee on ABCs vets many, but not all, of the appointments and reappointments to ABCs. As of July 2011, 200 ABCs were listed as going through their process. We were told that the number of ABCs on this list fluctuates as some ABCs are no longer required to go through the process, some ABCs become inactive over time, and new ABCs are created as considered necessary. The breakdown of the number of ABCs by Minister is provided in **Figure 1** (detailed list provided in **Appendix A**; refer to Section 1.2 for discussion regarding completeness of list). The Minister with the most ABCs within their portfolio is the Minister of Health with 44 (representing 22% of all ABCs); the Ministers with the least ABCs are Local Government and Healthy Living, each with 2.

Figure 1: Number of ABCs by Minister/Department

Minister/Department	Number of ABCs
Aboriginal and Northern Affairs	5
Advanced Education and Literacy	10
Agriculture, Food and Rural Initiatives	19
Conservation	13
Culture, Heritage and Tourism	13
Education	6
Entrepreneurship, Training and Trade	6
Family Services and Consumer Affairs	21
Finance	7
Health	44
Healthy Living, Citizenship and Youth	2
Housing and Community Development	3
Infrastructure and Transportation	10
Innovation, Energy and Mines	7
Justice	13
Labour and Immigration	11
Local Government	2
Water Stewardship	8
Total	**200**

The relevant legislation for each ABC often specifies how the appointment is to be made. Most of the ABC appointments are made by an Order-in-Council (107), although some are made by Ministerial Letter (67) and some have a combination of both (4). An Order in Council (OIC) is a formal, legal document setting out a decision that is made by Cabinet and approved by the Lieutenant Governor. Once signed by the Lieutenant Governor, an OIC becomes a public document. When an OIC is not required by legislation, the appointments are made by a Ministerial Letter. On average in the past three years, 198 new appointments were made by Order-in-Council and Ministerial letter. This ranges annually from 136 to 243 new appointments.

The Cabinet Committee on ABCs is currently composed of 8 Members of the Legislative Assembly (MLAs), two of whom are Ministers. The position of Chair is, and has been traditionally held by, the Minister of Labour and Immigration. The composition of the Cabinet Committee on ABCs changed to its current structure in January 2010. Prior to that, it was composed of 11 members, with 5 MLAs (including 2 Ministers) and 6 other members, external to government. On average, the Cabinet Committee on ABCs holds 7 meetings per year, approximately every 5-6 weeks between September and June. The Cabinet Committee on ABCs reviews the Minister's recommendations and either concurs with the recommendations or provides alternate suggestions for the Minister to consider. The Cabinet Committee on ABCs also discusses other issues related to ABCs and makes policy decisions regarding ABC appointments.

The Cabinet Committee on ABCs is supported by a Managing Coordinator and one administrative position (the ABC Office). The budget for the administration of the ABC Office is included within the appropriation for the Department of Labour (**Figure 2**). The ABC Office maintains all records of appointments for the ABCs that go through the Cabinet Committee process. The ABC Office also takes the lead role in any initiatives and projects related to ABCs, including the development and coordination of the information now available on the website. The ABC Office will be responsible for the ongoing management of the website information. As well, the ABC Office is involved in the administration of training and orientation programs for all public sector appointees that is currently being delivered by the Crown Corporations Council.

Figure 2: Annual administration budget of ABC Office

	Actual 2008/09	Actual 2009/10	Actual 2010/11
Salary and benefits	$ 120,700	$ 134,200	$ 125,900
Expenses	7,000	7,100	5,500
Total	**$ 127,700**	**$ 141,300**	**$ 131,400**

Source: ABC Office

At the time of our review, the ABC Office's database contained 1,558 current appointments, composed of 1,282 government appointments, 201 appointments nominated by external organizations, 63 civil servant appointments, and 12 MLA appointments. Some ABCs are comprised of a combination of these types of appointments. Some ABCs are comprised of civil servants only, who serve on the ABC as a function of their full-time public sector position. Appointments that are nominated by external organizations still go through the government's appointment process administratively.

Most of the ABCs have been categorized by the type of function/service they provide: Compliance and regulatory (56); Deliberative (47); Advisory-Research (21); Quasi-judicial (15); Quasi-judicial Appeal Boards (11); and Advisory-Funding (11). Remuneration of ABC members varies depending on the category, and the ABC's level of responsibility, authority, function, required level of expertise and workload. Many ABC appointments are voluntary positions with no remuneration, except for reimbursement of any out-of-pocket expenses incurred on behalf of the ABC. Some ABC appointments are paid an annual stipend, or a *per diem* rate for their attendance at meetings. Civil servants are not generally remunerated for their service to ABCs. In some cases, legislation permits MLAs to be remunerated at the same rate as other ABC members. We were advised that the remuneration levels for ABCs have not changed since 1987.

Why we undertook the review

Concerns with respect to the appointment process have been brought to the attention of the OAG in a variety of ways by both current and past members of ABCs. These have focused on the timeliness of appointments, the lack of information available, as well as the limited consultation and involvement of ABCs in the process. Issues with respect to the appointment practices have also been raised in an independent review of Regional Health Authorities[1], as well as in a 2009 report by the Manitoba Law Reform Commission[2].

Also, as reported in our 2009 report, *Study of Board Governance in Crown Organizations*, the appointment process was a significant area of concern for both members and senior management of the 50 Crown organizations that were surveyed[3]. Almost half of the members told us they are not satisfied overall with the current appointment process. 30% of members and 50% of senior management indicated that it takes too long to fill member vacancies when they arise. In the commentary to our survey, 187 suggestions for improvement were provided by respondents with respect to the appointment process. Key issues raised by both members and senior management included the need to identify and appoint qualified members based on the appropriate skills and competencies; the need for more consultation with the ABC regarding the skills/competencies required; and concern over the lack of timeliness in appointments.

Given the considerable impact that ABCs potentially have on all Manitobans, it is important that the appointment process be well managed and that appointments be timely. Deficiencies or delays in the appointment process could significantly impact the effective functioning of the ABCs, or may even discourage qualified individuals from accepting appointments or renewals of their terms.

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[1] Report of the Manitoba Regional Health Authority External Review Committee, February 2008. www.gov.mb.ca/health/rha/review.html

[2] Manitoba Law Reform Commission, *Improving Administrative Justice in Manitoba: Starting with the Appointments Process*, Report #121, November 2009. www.gov.mb.ca/justice/mlrc/pubs/publications.html

[3] www.oag.mb.ca/wp-content/uploads/2011/06/board_gov_survey_report_2009.pdf

Audit scope and approach

The purpose of our audit was to examine the process used to appoint members to Manitoba's ABCs. Our audit objectives were:

1. To determine whether adequate information is available to Manitobans regarding the appointment process.
2. To determine whether appointments to ABCs are made in a timely manner.

We specifically examined the appointment process utilized for the 200 ABCs that are part of the Cabinet Committee on ABCs' process (**Appendix A**). We examined all ABC appointments over a three year period, ending July 2011.

Our field work was substantially completed by September 2011. Our examination was performed in accordance with the value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants, and accordingly, included such tests and other procedures as we considered necessary in the circumstances.

We received excellent cooperation and assistance from the ABC Office throughout our review. We also conducted interviews with a variety of individuals involved in, or affected by, the appointment process. These included selected Special Assistants and other ministerial staff, selected ABC Chairs and senior management, and organizations such as the Manitoba Council of Administrative Tribunals, RHAM (Regional Health Authorities of Manitoba), and the Manitoba Law Reform Commission. The Director of Civil Legal Services also provided assistance with respect to legislative matters and legal processes. The valuable input and thoughtful commentary on the appointment process by all of the people interviewed was greatly appreciated.

As one aspect of our audit, we reviewed publically available information on the practices utilized by other Canadian jurisdictions, in order to inform our expectations of Manitoba's process. We also reanalyzed the findings of our 2008 survey of all Board members and senior management in 50 Crown organizations within Manitoba, which had asked specific questions related to the appointment process.

We note that, given the wide variety of ABCs, there are specific issues and concerns with the appointment process that are unique to particular ABCs. Our report does not specifically address concerns that are specific to any individual ABC and is intended to be reflective of the widest array of ABCs.

Excluded from our review were Order-in-Council appointments made to fill full-time positions within the civil service and other public organizations, as well as appointments to the judiciary. Also excluded from our review were issues related to the remuneration of ABC members, although a number of concerns were raised to us during the course of our review with respect to remuneration levels and practices.

We did not assess the relative merit and qualifications of any particular ABC appointment. The public sector appointment process is by its very nature a political process, and partisan considerations are assumed to play some part in the decision-making process. While many similar reviews of appointment processes discuss the influence of partisanship and often seek to eliminate such consideration from the process, our audit focused solely on the administrative aspects of the process. As was noted in the OAG's 2009 governance report, *"the specific choice of individual to fill a board position appropriately rests with the Minister and Government."* Regardless of partisanship considerations, opportunities exist to improve the administrative process in order to make it as transparent and effective as possible to ensure timely appointments are made.

Audit findings and recommendations

1. Website information on ABCs significantly enhanced but further improvements could be made

An appropriate degree of openness should exist regarding the administrative process utilized to appoint Manitobans to serve on public sector ABCs. We expected that such information would be publically available and help facilitate the recruitment process. In order to inform our expectations with respect to the public information available in Manitoba, we reviewed the accessibility and transparency of the ABC appointment process in other Canadian jurisdictions. We expected that Manitoba's practices would align comparably to other Canadian jurisdictions.

1.1 Website recently updated to provide information on listed ABCs and opportunity to apply online

At the onset of our review, very limited information was available on the Government of Manitoba website regarding Manitoba's ABCs and no public information was available regarding the appointment process. This situation was strengthened during the course of our review, and the Government of Manitoba website was updated in July 2011 to provide improved information on ABCs (www.gov.mb.ca/government/abc/index.html). There is now a link entitled "Agencies, Boards and Commissions" directly on the website's homepage. Further, the website allows individual citizens to submit their applications and/or resumes for consideration for an ABC appointment. This considerably enhances the accessibility and transparency of ABC appointments to Manitobans.

We reviewed the websites of each jurisdiction and found that all Canadian jurisdictions other than Newfoundland/Labrador and Saskatchewan[4] provide public information regarding their ABCs on their website and allow their citizens to apply for ABC appointments. **Appendix B** provides a comparison of key characteristics of each website by jurisdiction.

The new ABC section of Manitoba's website is clear and user-friendly. The information now provided regarding each ABC includes a brief description of the entity; the current list of appointed members; the number of meetings generally held; the time commitment required by members; and the level of remuneration, if

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[4] Note that Saskatchewan does provide public information regarding the appointment process for its Regional Health Authorities.

any. The application process is explained and relatively straightforward, allowing people to submit their application online for future consideration.

There are several aspects found in other jurisdictions' websites that could be considered for addition to Manitoba's website. These include the current members' term expiry dates, the advertisement of upcoming vacancies, and the announcement of successful appointees for positions. Also, the website does not provide a complete list of ABCs on one page, nor does it list the ABCs alphabetically, only by Department. This may make it difficult to find a specific ABC.

We note that one of the challenges in making such information publically available is the requirement to keep it current and accurate on an ongoing basis. As the membership of ABCs is constantly changing, a concerted effort will be required to update information in a timely fashion. Website policies and procedures will need to be established. Further, the submission of applications and resumes from interested citizens may also add an additional administrative burden to the process as currently conducted. Additional administrative resources may need to be considered.

We urge government to develop a plan to ensure the information provided on the website remains accurate and up-to-date, and to continue to improve the website's usefulness through the addition of more information over time. The improvements that have been made to the ABC section of the website should also be publically communicated.

We also encourage all ABCs:

- To review the website information provided for their organization and ensure that it is accurate. ABCs should take the initiative to contact and advise the ABC Office when updates are required to the website information, in order to assist in ensuring the information always remains current and relevant.
- To direct potential members who have valuable skills/competencies for their ABC to forward their resumes through the government's website.

1.2 Complete list of all ABCs not available on website

The website currently lists 192 ABCs, rather than a complete list of all ABCs in the Province. By not providing complete information, it may be misconstrued that these 192 entities are all the ABCs to which government makes appointments. In order to be as transparent and accurate as possible in providing information to Manitobans, it is important that the website provide a complete list of all ABCs to which government makes appointments.

The ABC Office maintains a list of the ABCs to which the Cabinet Committee on ABCs is involved in reviewing the appointments. As of July 2011, 200 ABCs were listed as going through their process. However, as noted previously, the Cabinet Committee on ABCs does not vet all of the ABC appointments, so their list is not a complete picture of all ABCs in Manitoba.

A number of reasons were provided for why particular ABCs are included in the Cabinet Committee on ABC's process and why some are not. However, there were inconsistencies within each of the reasons provided. For example, we were told that one organization is not on the list because it is an appointment to a federal organization; yet, there are examples of appointments to other federal bodies that are currently on the list. Or that an ABC is not on the list because the appointments are all civil servants; yet there are many ABCs on the list that are also composed of civil servants only. Also similar types of organizations which require appointments are not handled consistently, such as Special Operating Agency advisory boards.

During our review, we requested a complete list of all ABCs to which government makes appointments, including those that do not go through the Cabinet Committee on ABCs' process. We were advised that each Department is responsible for maintaining their own list of ABCs. No central repository of all ABCs exists that provides readily accessible information. In our discussions with Special Assistants, it was noted that even within some Departments information on ABCs is not always maintained centrally but is diffused within the various Departmental Branches, making it sometimes difficult to obtain complete information.

The ABC Office attempted to ascertain the information from each Department in order to accumulate an exact total for our audit. All but one Department provided the information, resulting in the addition of 37 ABCs to the ABC Office's list of 200 (**Figure 3**). However, we independently identified several other ABCs which were not included, but should be added to the overall total.

> **Recommendation 1:** We recommend that the website include a complete list of all ABCs to which government makes appointments.

Recommendation 2: We recommend that a central repository for all ABCs be established.

Recommendation 3: We recommend that the Cabinet Committee on ABCs define and implement guidelines for the selection of ABCs to be included in their process.

Figure 3: Additional ABCs by Department

Department	Currently Listed ABCs	Additional ABCs[1]	Total
Aboriginal and Northern Affairs	5	0	5
Advanced Education and Literacy	10	2	12
Agriculture, Food and Rural Initiatives	19	1	20
Conservation	13	1	14
Culture, Heritage and Tourism	13	0	13
Education	6	5	11
Entrepreneurship, Training and Trade	6	1	7
Family Services and Consumer Affairs	21	6	27
Finance	7	2	9
Health	44	-	44
Healthy Living, Citizenship and Youth	2	2	4
Housing and Community Development	3	1	4
Infrastructure and Transportation	10	2	12
Innovation, Energy and Mines	7	0	7
Justice	13	0	13
Labour and Immigration	11	11	22
Local Government	2	1	3
Water Stewardship	8	0	8
Executive Council	-	2	2
Total	**200**	**37**	**237**[2]

1 Information reported as provided; not verified through audit procedures.

2 We note that this total is not a complete number of all ABCs in Manitoba.

1.3 No public information on process used to make appointments

The ABC section of the website does not include a description of the administrative process used by government to make appointments to ABCs. In reviewing other jurisdictions' websites, we noted that many do describe the appointment process used.

In our discussions with ABC Chairs and senior management, most were unaware of the Cabinet Committee on ABCs, the ABC Office, and the process government follows in making appointments. Further, we noted several occasions in Hansard where MLAs expressed uncertainty on the appointment process and asked for further information on appointments. There have also been private members bills brought forward requesting improvements to the transparency of the process through the addition of a legislative committee review process. These bills were never passed.

It is important that the appointment process be clearly communicated to all stakeholders and ABCs, so that they can manage their operations within the time requirements involved. For citizens who put forward their names for consideration, it is also important that they understand the time frame that is generally required to make appointments so that they have realistic expectations and can plan accordingly.

> **Recommendation 4:** We recommend that the website be updated to include a description of the appointment process.

1.3.1 Current appointment process

Our discussions with the ABC Office revealed the following major steps in the appointment process, as it typically occurs for all deliberative, advisory, regulatory, and quasi-judicial ABCs. While there are some variations because of the diverse nature of ABCs, the process outlined below conveys the administrative steps and approvals that need to be taken in most ABC appointments.

There are a number of different people and steps involved in the appointment process. The responsible Minister plays the lead role in the process, with the administrative work for the ABC appointments within the portfolio delegated to ministerial staff (usually the Minister's Special Assistant). Special Assistants have a myriad of duties within the Minister's office, hence finding the time to deal with the appointment process is potentially a challenge. The ABC Office provides training to the Special Assistants, as well as a step by step guide and checklist sheet which outlines the process and the activities for which the Minister's office is responsible.

The process description below begins at the point a vacancy arises in an ABC, and continues to when the OIC or Ministerial letter is signed and the new member is invited to attend their first meeting. For reappointments, the process is slightly more straightforward as a new individual does not need to be identified and recruited, however reappointments still go through the approval process and require an OIC to be prepared and approved.

1. The need for a new appointment is identified, either due to a resignation or a full term expiry.
    - For some ABCs, legislation or by-laws specify the maximum length a member can serve on the ABC. If a member has served the maximum amount, their term is complete and a new appointment is required.
    - Resignations from an ABC can occur for a variety of reasons. If a member chooses to resign or not stand for reappointment, they usually are required to advise the Minister and/or their ABC Chair in writing. In most cases, the Minister's office informs the ABC Office of any such resignations or intentions to not stand for reappointment.
    - When the Minister's office is advised of a resignation or a term expiry, a letter of appreciation is sent to the member for their service to the ABC.
2. The ABC Office monitors the term expiries requiring a reappointment or new appointment and generates a list for each Minister 4 months in advance of the expiry date. These lists are delivered to each Minister's office at the start of every month. The ABC Office also uses this monthly notification system to track the progress of each appointment through the administrative process.
    - As of July 2011, there were 165 outstanding appointments and a further 47 appointments whose terms would be ending within the next 4 months (i.e., by November 2011).
3. The Minister's office completes a form entitled, Vacancy/Reappointment Report, which notes all vacancies and reappointments required for each ABC, and provides the completed form to the ABC Office.
    - The form lists the current member's name and whether they are being reappointed or need to be replaced due to resignation or term expiry.
    - The form also provides an opportunity to specify the expertise/experience that will be required in filling the position. The Minister's office may have discussed the needs with the ABC.
    - If ABCs were to provide the Minister's office with a completed skills matrix of the current and required competencies for their ABC, it would help inform the process at this point. (See **Appendix C** for example)

4. If a new appointment is required, identifying an individual to serve on the ABC is necessary. This is done in a variety of ways. The ABC Office reviews their database containing the resumes/application forms of potential members and puts forward names, including any individuals who fit the expertise/experience requested. The ABC Office will also send an email to all Ministers and government MLAs advising that a vacancy exists on particular ABCs and requesting that any suggested names/resumes for the appointment be forwarded to the ABC Office. The Minister's office also considers individual names from a variety of resources and community contacts. We were advised that the Special Assistants may also have discussions with the ABC Chair or senior management, and potentially other stakeholder groups, to identify potential members.
   - Resumes in the database come from a variety of sources, including any resumes/application forms which are forwarded by interested citizens (usually to a Minister or their local MLA). The ABC Office categorizes the individual's areas of interest, characteristics (including self-declaration for equity groups), and any specific skills/competencies, and inputs the information into the database. This allows the name of the individual to be identified for a position when specific skills/competencies are required.
   - As of July 2011, the database contained 193 resumes of potential members. The ability for individuals to now apply online will likely increase this number.
     - ➢ Identifying potential new members can add significant time to the overall appointment process. We were advised that sometimes the search for a suitable candidate is relatively straightforward, but on some ABCs there is a need for individuals with specific technical requirements that can be difficult and time consuming to find. Also it is sometimes difficult to find individuals willing to serve on certain ABCs.

5. The Minister puts forward names to the Cabinet Committee on ABCs for recommendation. The information on these nominees is also provided to the ABC Office for administrative purposes.
   - The ABC Office suggests that 2 names be approved by the Minister at this time, a first choice for recommendation and an alternate choice. Having an approved alternate is useful if the Cabinet Committee on ABCs does not concur with the first nominee.
     - ➢ Given the busy agendas of Ministers, there can be potential time delays in the selection of individuals.

6. The Minister's recommendations for new appointments and reappointments are brought forward at the next scheduled meeting of the Cabinet Committee on ABCs. On average, the Cabinet Committee on ABCs holds 7 meetings per year, approximately every 5-6 weeks between September and June.
    - The ABC Office sets the meeting dates well in advance, at a specified time (currently Monday mornings). The scheduled meeting dates are provided to all Minister's offices, as well as the dates that Agenda items are due and when the nomination list is due prior to the meeting date.
    - Prior to the meeting of the Cabinet Committee on ABCs, the ABC Office sends out a notice, asking for Agenda items to be forwarded. The ABC Office prepares the Agenda and provides a meeting package to each Committee member. Each meeting package contains the documents provided by the Minister's office regarding their recommended appointments and the resumes of all individuals.
    - We reviewed the minutes for each meeting of the Cabinet Committee on ABCs in the past 3 years. On average, appointments and reappointments to about 18 ABCs are discussed at each meeting. The Cabinet Committee on ABCs reviews about 200 new appointments and 300 reappointments per year.

7. The Cabinet Committee on ABCs will review the Minister's recommendations and concur or make alternative suggestions for the Minister to consider. In some cases, the Cabinet Committee on ABC requests an alternative nomination be brought forward at a future meeting.
    - We were advised that for those ABCs whose appointments are put forward by external stakeholders and organizations, the Committee always accepts the recommendation and puts it forward for Cabinet approval. As such, the recommended names from these external organizations are on the Committee's Agenda as information items only.
    - After the meeting, the ABC Office prepares the meeting minutes and provides each Minister with an excerpt of all decisions related to their ABCs.

8. If the Cabinet Committee on ABCs does not concur with the Minister's recommendations, the process of identifying an individual to serve on the ABC may need to start again.
    - We were advised that the final decision on the names put forward for Cabinet approval ultimately rests with the responsible Minister. However, if the Minister presented to Cabinet a nominee to which the Cabinet Committee did not provide concurrence, the Chair of the Committee on ABCs would advise Cabinet of the concerns.

  - ➢ A significant time delay can occur if the process of identifying and recruiting an individual needs to start again (i.e., Step 4).

9. If the Cabinet Committee on ABCs has concurred, the Minister's office prepares the documents necessary to now bring the matter forward to Cabinet for approval.
   - A Cabinet Submission document is prepared that puts forward the name of the nominee for approval. Departmental staff prepares this documentation, with the assistance of the Special Assistant. As Cabinet generally meets each Wednesday, submissions are due by 3:00pm the previous Wednesday in order to be placed on Cabinet's Agenda for the next week's meeting.
     - ➢ A potential time delay can occur depending on how long it takes to prepare the Cabinet Submission documents.

10. At a future Cabinet meeting, the recommended appointments and reappointments are discussed. The responsible Minister takes the lead in putting forward the recommendations, and a discussion may or may not be held on the matter.
    - If the recommendation is approved by Cabinet, the appointment is considered to be passed "in principle".
      - ➢ On occasion, there may be urgent or pressing matters on Cabinet's Agenda that will result in the discussion on appointments to be deferred to a future meeting.

11. Once approved by Cabinet, the Minister's office will contact the individual to advise they have been selected to serve on the ABC, and to confirm the individual will accept the appointment. If the individual agrees, the appointment process continues. If not, and an alternate nominee has also been approved, the alternate is contacted and asked to serve. If there is no agreement to serve, the process of identifying another potential nominee begins again.
      - ➢ If the appointment is rejected at this point, a large time delay occurs. The ABC Office estimated that this would add a minimum of an extra 5 weeks to the process.

12. Once the appointment has been accepted, the Order-in-Council (OIC) documents or the Ministerial Letter is prepared.
    - If the appointment is made by Ministerial Letter, the letters of appointment are prepared and signed by the Minister. For these appointments, the process ends at this point, as no further approvals are required. The ABC Office updates their records and database to reflect the new information.

13. The prepared OIC document, as well as a copy of the Cabinet Submission, is forwarded to Civil Legal Services of the Department of Justice. Civil Legal Services ensures the OIC is clear, complete and accurately reflects the relevant legislation. In most cases, the approval by Civil Legal Services is completed within a few days (and can even be done within one day if required). Civil Legal Services signs the OIC and returns it to the Department.
    - The wording of OICs for appointments generally follow a standard template. In some cases, the OIC is prepared by Civil Legal Services if there are complicated issues or new legislation.
14. The OIC now returns to Cabinet for final approval. Hence, it is put on Cabinet's Agenda for the following meeting. At this Cabinet meeting, the OIC is approved and signed by the Minister and the presiding member of Executive Council. We were advised that there is no discussion of the OIC at this point; approval is automatic and sign-off is a routine activity.
    - The process of getting the OIC on Cabinet's Agenda remains the same, in that the Department prepares the documentation needed and submits it by 3:00pm Wednesday for inclusion at the following week's Cabinet meeting.
        - ➢ As noted previously, in instances where there are urgent or pressing matters on Cabinet's Agenda, this approval may be deferred to a later meeting.
15. The OIC is brought to the Lieutenant Governor for signature. The OIC comes into effect on the day it is signed by the Lieutenant Governor.
    - Once the OIC is signed, the Minister's office sends the appointee a letter welcoming them to the ABC and advising that the ABC Chair (or senior management) will be in contact with them regarding the next meeting. The ABC Chair is copied on the letter, and provided the new member's contact information. The process ends at this point, and the ABC Office updates their records and database to reflect the new information.

2. Timeliness of appointments and reappointments requires improvement

An appropriate degree of timeliness should exist in the appointment process so that turnover of membership occurs smoothly as terms expire, and ABCs are not functioning without full membership for excessive periods of time. We expected that the appointment process would be managed in a manner that:

- Ensures terms expiries are filled with new appointments by the date of the expiry.
- Ensures unexpected vacancies (such as resignations) are filled to minimize the length of time the ABC is required to function with a vacant position.

2.1 Appointment process is time-consuming and needs to start sooner

Timeliness in the appointment process is important because vacancies can impact the effective functioning of any ABC. For example, an ABC with a limited number of members can experience difficulties in attaining the quorum required to make decisions; as well, ABCs such as adjudicative tribunals that have to be composed of an appropriate mix of individuals may experience difficulty holding a hearing.

Our 2009 report and our interviews with selected ABC Chairs and senior management noted that timeliness of the appointment process is a key concern for many ABCs. Our interviews also noted significant concerns by administrative boards and tribunals with respect to vacancies and the qualifications of members. In our 2009 report, government responded that the ABC Office *"instituted a monthly notification system that provides Minister's offices with 4 months advance notice of upcoming appointment expiry dates."* They further noted that this monthly notification system *"has proved to be an effective tool in keeping board appointments current and providing for a full complement of board members."*

We reviewed the July 2011 notification document and found that significant time lags still exist in some appointments and reappointments. Outstanding appointments were still required at 53 ABCs, even though these appointments had been already discussed by the Cabinet Committee on ABCs. Some of these outstanding appointments had been discussed more than 6 months earlier, with the oldest dating back to over a year. Within these 53 ABCs, there are 230 outstanding appointments/reappointments.

We reviewed the past two years of OIC appointments, dating from August 2009 to July 2011. The 164 OICs captured a total of 251 new appointments and 378 reappointments. Expiry dates for 44% of the appointments were not noted on the OICs. For the remainder, 29% were made by the date of the term expiry and 27% were made past the expiry date. Of the appointments made past the term expiry date, the amount of time ranged from under a month to 72 months (i.e., 6 years). The average amount of time past the term expiry was almost 6 months.

In our review of OICs, we noted examples where it took an excessive period of time (i.e. more than year) to reappoint the exact same members to an ABC. We also noted examples where the opportunity existed to make reappointments in a more timely manner, as new appointments were made to an ABC yet reappointments to the same ABC were not made at the same time.

Given the time delays that are occurring, and recognizing that identifying qualified members to serve on ABCs takes time, the process needs to begin well in advance for appointments and reappointments to be made in time for the expiry date.

Recommendation 5: We recommend that the appointment process begin sufficiently in advance of term expiries to allow all appointments/reappointments to be made in time for the expiry dates.

2.2 Enhanced consultation with ABCs needed for a competency-driven appointment process

Our 2009 report noted concern by about half of all members and senior management that their input regarding member appointments should be sought more often, and that government does not consult enough with the ABC on the required qualifications and skills in appointing new members. However, our report also noted that not all ABCs have taken a proactive approach in providing information to the Minister's office about the qualifications/skills required in new members. Government concurred with this issue, noting: *"The importance of a strong working relationship between Ministers and their boards is recognized, including consultation with respect to the appointment of new members. This allows both parties to exchange ideas and information with respect to skill requirements as well as gender balance, diversity and geographic representation on boards."*

Establishing a good working relationship between the Minister's office, especially the staff delegated responsibility for appointments (usually the Special Assistant), and the ABC Chair or senior management is important and can assist in improving the timeliness of the appointment process. The ABCs can assist the appointment process by advising the Minister's office of any members' intentions to stand for reappointment several months before the term expiry.

A competency-driven process is one that not only reflects the diversity and geographic needs of the province but provides each ABC with the appropriate mix of skills/competencies that are best suited to fulfill its mandate. The ABC is in the best position to know the current mix of skills and characteristics that are represented on the ABC, and know what additional skills and characteristics would best complement that mix given the strategic needs of the entity. ABCs could complete a skills matrix that identifies current competencies, as well as identifies any existing gaps or requirements/preferences for future members (See **Appendix C**). The skills matrix should be provided to the Minister's office well in advance of any vacancies or term expiries, so that the information can be taken into consideration throughout the appointment process.

While ABCs can make suggestions for potential new members, it must be recognized that any such suggestions/nominations are only one consideration in the appointment process, and that their suggestions may not ultimately be selected for appointment. Recognizing the political nature of public sector appointments, the specific choice of individual to fill the position appropriately rests with the Minister and government of the day.

While there is certainly no onus on the Minister to appoint according to the ABC's preferred skillsets/competencies, the provision of such information to the Minister ensures s/he is aware of any gaps or requirements of the ABC. This may enhance the likelihood of attaining members with such skillsets in a current or future appointment. However, the ABC must always keep in mind that Ministers cannot just recruit to their preferences, as Ministers may need to consider a number of other external factors or policy issues in recruiting an individual for the appointment. Even so, ABCs should continue to provide information to the Minister regarding their needs and requirements in future appointments.

> **Recommendation 6:** We recommend that all Ministers offices contact the ABCs sufficiently in advance of term expiries to discuss the needs and requirements for new appointments/reappointments.

We also encourage all ABCs:

- To foster a good relationship with the Minister's office, and be prepared to provide input and information regarding any upcoming vacancies and term expiries. ABC Chairs should be discussing reappointments with their members several months before their term expiry and provide the Minister's office with information regarding that member's intentions as soon as possible. The completion of a skills/competency matrix for the ABC will provide useful information to the Minister's office as to what skills/competencies are sought in future appointments (See **Appendix C**).

2.3 A quarter of all current ABC members (25%) are serving with expired terms

Timeliness in the reappointment process is also important. In most cases, individuals serve on these ABCs primarily as a public service to the community. Often, their service to an ABC is done in their leisure time, with no or modest compensation, even though the time and input required for some ABCs is substantial. Given this, it is important that government value and respect the time and commitment of their appointees, and ensure the reappointment process allows appointees sufficient notice to manage their personal and professional affairs accordingly. Deficiencies and/or delays in the reappointment process may discourage committed, qualified appointees from accepting renewals of their terms.

Our review of all term expiry dates found that of the 1558 positions currently serving, 392 had expired as of July 2011 (25%). Only about half of all appointments (58%) are serving current terms. Also we found that 239 appointments (15%) are without a set term expiry or in an 'at pleasure' appointment.

Of those who are currently serving in expired terms, 22% have been expired for more than 3 years and 10% have been expired for more than 5 years. The oldest expiries date back to 2002; in other words, individuals have continued to serve on their ABC for almost a decade after their terms expired.

We examined the expiry dates within the 47 ABCs categorized as deliberative. From a total of 435 appointees, 312 are serving current terms (72%), 78 had expired as of July 2011 (18%), and the remaining 48 serve with no expiry or 'at pleasure' (11%). We also examined the expiry dates within the 56 ABCs categorized as compliance-regulatory. From a total of 328 appointees, 211 are serving current terms (64%), 85 had expired as of July 2011 (30%), and the remaining 32 serve with no expiry or 'at pleasure' (10%).

We noted that some of the expired and out-of-date appointments serve on some of the largest Crowns and/or entities with significant financial responsibilities. For example, the terms for all members of the Boards of Directors of Manitoba Public Insurance and the Teachers Retirement Allowances Fund have been expired since 2007, Manitoba Hydro has some members whose expiries date back to 2009, and Manitoba Liquor Control Commission since 2010. Interestingly, we noted that for those ABCs that have specific deadlines for reappointments to occur (such as Community Colleges whose members can only serve 3 months past their term expiry), appointments were generally made within the requirements.

Figure 4 provides the number of expired appointments by Department. The only Department with no appointments that are expired is Housing and Community Development. Departments with a significant number of expired appointments are: Conservation (54), Water Stewardship (47), Culture, Heritage and Tourism (47), Health (45), and Justice (44). However, when you consider these in light of how many appointments overall Departments are required to make, the Departments with the most out-of-date appointments are: Water Stewardship (90% of their total appointments are expired), Justice (75%), Local Government (47%), Conservation (46%), and Infrastructure and Transportation (43%). Departments such as Health (12%) and Family Services and Consumer Affairs (12%), while high in number of expired appointments, are lower when you consider the amount as a percentage of all the appointments they are required to make.

Figure 4: Expired terms by Department

Department	Expired Terms	Number of ABCs	Total Appointees	Percentage: Expired/ Total Appointees
Aboriginal and Northern Affairs	2	5	20	10
Advanced Education and Literacy	5	10	78	6
Agriculture, Food and Rural Initiatives	18	19	81	22
Conservation	54	13	118	46
Culture, Heritage and Tourism	47	13	133	35
Education	7	6	30	23
Entrepreneurship, Training and Trade	7	6	33	21
Family Services and Consumer Affairs	31	21	253	12
Finance	3	7	37	8
Health	45	44	372	12
Healthy Living, Citizenship and Youth	4	2	29	14
Housing and Community Development	-	3	12	-
Infrastructure and Transportation	28	10	65	43
Innovation, Energy and Mines	13	7	43	30
Justice	44	13	59	75
Labour and Immigration	21	11	107	20
Local Government	17	2	36	47
Water Stewardship	47	8	52	90
Total	**393**	**200**	**1,558**	

Many pieces of legislation carry a clause that allows members to serve past their term expiry. It specifies that an appointee *"continues to hold office until he or she is reappointed, the appointment is revoked or a successor is appointed."* As noted by Civil Legal Services, this clause ensures that there is continuance and stability in the organization and that at no time would it not have a legally, properly-constituted board with the authority to make decisions, if for some reason government was unable to appoint new members by the time of the term expiry. It is important that such a clause exist in legislation. However, as OICs generally set a term and some legislation even specifies term limits, it is arguably not the intention of this legislative clause that members serve with no end date. By not reappointing or replacing members in a timely fashion, those members in effect serve in excessively long appointments. Our review noted several examples of ABCs where members have now been serving longer on expired terms than they were ever appointed to serve originally.

> **Recommendation 7:** We recommend that, while legislation permits incumbent appointees to continue past their term expirations, Ministers ensure that all ABC appointments are current and reappointments of term expiries are kept up-to-date.

2.4 Almost 30% of ABCs do not have staggered terms of appointment

Our review noted that 55 of the 200 ABCs do not have staggered terms of appointment. Hence, all members appointed to the ABC expire at the same time. While some of these ABCs are advisory committees, more than half act as the governing body for significant corporations, including the Manitoba Liquor Control Commission, the Manitoba Lotteries Corporation, Manitoba Agricultural Services Corporation, the Centennial Centre Corporation, the Brandon Centennial Auditorium Corporation, the Manitoba Gaming Control Commission, the Hazardous Waste Management Corporation, as well as significant financial bodies such as the Teachers Retirement Allowances Fund, the Public Utilities Board and the Manitoba Securities Commission.

Of the 55 ABCs with no staggered terms, there are 20 ABCs where all members are currently expired and serving past their expiry date.

Staggering terms ensures that there is an orderly transition of ABC members and that not all members leave the organization at the same time, which would undermine the effective functioning of the ABC. Leading practices suggest that there be staggered terms for members, with set term limits for renewal. Such practices help to balance the ABC's need for continuity and experience, with the need to refresh the ABC and bring on new skills/expertise to appropriately reflect the challenges faced by the organization.

> **Recommendation 8:** We recommend that appointments to ABCs have staggered terms, so that there is an orderly transition of new and more experienced members serving the ABC.

2.5 20% of members have served their ABC for over 10 years

The term of service for ABC appointments varies substantially and some legislation specifies term limits (i.e., the maximum amount of years a member may serve and be reappointed to the ABC), but many do not. Leading practices suggest that the terms of service for members must be long enough for members to gain experience and cultivate sufficient knowledge to understand the organization, but also that there be sufficient renewal of members to bring new perspectives and experience to the organization. As the challenges faced by an ABC change and evolve over time, ABCs that lack turnover or have excessively long-serving members can stagnate. The ABC's need for continuity and experience must be balanced with the need to refresh the membership and bring on new skills/ expertise to appropriately reflect new challenges faced by the organization.

Maximum term limits exist for a reason. Having term limits ensures that there is fresh perspective and renewal in the membership of an ABC over time. Serving on the same ABC for an excessively long period of time is not in the best interests of an ABC, especially if the ABC is a deliberative body as "permanent" appointments do not reflect good governance practices. Also, it creates a level of uncertainty for an ABC member to be in an expired term for an excessive period of time, which may be perceived as disrespectful to their commitment of time and effort to serve on the ABC.

Our review noted that there are some members who have served on the same ABC for significant lengths of time, going back as far as 1983. In total there are 308 individuals (20%) who have served their ABC for 10 years or more. Of these, 13 have served over 20 years. About half of current ABC members (52%) have served for 5 years or less. No start date was provided for 48 appointees (3%).

For the compliance-regulatory ABCs, terms start as far back as 1988, with 62 appointees having served 10 years or more (19%). For the deliberative ABCs, terms also start back as far as 1988, with 55 appointees having served 10 years or more (13%). Serving on the same ABC for an excessively long period of time is not reflective of good governance practices for a deliberative ABC.

By not reviewing the appointments and making reappointments on a regular basis, government is not taking advantage of the opportunity to review the functioning of the ABC and make changes that reflect the ABC's current context, if required. This also limits access and opportunities for other Manitobans to serve on that ABC. We reviewed when the last time each of the ABCs was before the Cabinet Committee on ABCs, and noted that 15% of ABCs have not been reviewed in longer than 5 years and at least 5 ABCs have not been reviewed in over a decade.

As government may not wish to lose the valuable expertise gained by an individual who has served on an ABC for a significant length of time, there should be consideration to appointing the individual to become a member of a different ABC, where their experience and expertise could be well utilized and of great benefit to the new ABC. Members could be appointed in progressively more challenging positions as their experience and expertise with public sector ABCs grows. Hence, a Chair of a small ABC who has served their maximum term might be a good candidate for government to consider on an ABC with more significant and financially challenging issues. In this way, good experience/expertise is not lost and fresh perspective/experience is brought to ABCs overall.

> **Recommendation 9:** We recommend that government set term limits, including a maximum term chosen to complement the requirements of the ABC.

Other related observations

Review of other Canadian jurisdictions

We researched leading practices in other Canadian jurisdictions in order to inform our expectations with respect to the appointment process utilized in Manitoba. Across Canada, there are a variety of ways in which appointments to ABCs are made, whether federally, provincially or municipally. Even though the administrative practices utilized by each province's Legislature differ, we looked at how accessible it is for all Canadian citizens to participate in the public sector organizations within their jurisdiction. We highlight below some key differentiating factors in the appointment process utilized federally and by leading provincial jurisdictions.

Review of other Canadian jurisdictions

Jurisdiction	Appointment process
Canada	• Appointments made to the wide array of federal agencies, boards, commissions and tribunals are referred to as Governor-in-Council (GIC) appointments. GIC appointments are made on the recommendation of the responsible minister and are subject to the Prime Minister's approval before they go forward to the Governor in Council (which is the Cabinet and the Governor General acting in a legal capacity). The website for GIC appointments (www.appointments.gc.ca) was put in place in 2005, and notes the guiding principles for GIC appointments as being *"competency-based, professional and transparent."* The website lists current opportunities and allows interested individuals to apply online. Appointment vacancies are also advertized in the Canada Gazette. The website also provides conflict of interest policies, remuneration guidelines, as well as policies on expenses. • The Senior Personnel and Special Projects Secretariat within the Privy Council Office is responsible for the administrative aspects of the appointment process, on behalf of the Prime Minister's Office. For appointments to key positions such as Chairs and CEOs/Agency heads, the Privy Council Office also plays a role in reviewing and recommending selection criteria, receiving applications, screening candidates, and conducting interviews and reference checks. • We note that in government's 2005 report, *Review of the Governance Framework for Canada's Crown Corporations: Meeting the Expectations of Canadians*, specific measures regarding the GIC appointment process were noted, but these have only been partially implemented.

(cont'd.)

Review of other Canadian jurisdictions

Jurisdiction	Appointment process
	• In 2006, with the passing of *The Federal Accountability Act*, a provision was made for a new Public Appointments Commission within the portfolio of the Prime Minister, and a Public Appointments Commission Secretariat to provide administrative support. This commission's mandate was *"to oversee, monitor, review and report on the selection process...to ensure that every such process is widely made public and conducted in a fair, open and transparent manner, and that the appointments are based on merit."* We note that to date the Public Appointments Secretariat has not been made functional, as no appointment of commissioners has occurred.
British Columbia	• With the establishment of the Board Resourcing and Development Office (BRDO) within the Office of the Premier, British Columbia became one of the leading jurisdictions in Canada for its transparent and inclusive appointment process. The responsibilities of the BRDO are outlined as: *establishing guidelines for all provincial appointments to agencies; ensuring that all provincial appointments are made on the basis of merit following an open, transparent and consistent appointment process; and ensuring that appointees receive appropriate orientation and ongoing professional development with respect to agency governance.* The Governing Principles for the appointment process are: merit-based; transparent; consistent; probity; and proportionate. One of the stated goals of the BRDO is to make appointments at least 30 days in advance of the expiry date. • BRDO publishes its Appointment Guidelines online, which uses the same merit-based principles as legislatively required for administrative tribunals, and contemplates a significant role for the ABC in stating its needs and required competencies, identifying potential candidates through nominating committees, and assessing candidates prior to a short-list of qualified candidates in preferred order being provided to the Minister. • BRDO's website (www.fin.gov.bc.ca/brdo/) also explains the appointment process, advertises positions and provides an opportunity to apply online. All candidates who wish to be considered must complete a written candidate profile and declaration that is kept on file. The website announces all appointments made in the previous 30 days and includes detailed information on all ABCs and the qualifications of current members. Links to documents and appointment guidelines are provided. Guidelines for conduct are specified, including conflict of interests, and codes of conduct.

(cont'd.)

Review of other Canadian jurisdictions

Jurisdiction	Appointment process
Ontario	• In 2006, the Ontario government committed to a more open and transparent system for appointments to the province's 630 ABCs and established the Public Appointments Secretariat, whose principles governing the appointment process are: *"to ensure that the most qualified men and women having the highest personal and professional integrity serve the public on the Provinces' agencies, boards and commissions."* • The Public Appointments Secretariat is housed in the Ministry of Government Services. Its website (www.pas.gov.on.ca) lists all current positions for which applications are being accepted, as well as providing information on each ABC and its compensation. All who apply are required to complete a Personal and Conflict of Interest Disclosure Statement form with their submission. New appointments, complete with biographical details, are announced on the website. The website also provides generic governance tools such as codes of conduct and discussions of good governance principles. • The Ontario Legislature has established a House Standing Committee on Government Agencies, which has the right to review intended appointees who may be requested to appear before the Committee to discuss their qualifications. While the Committee does not have a veto, it reports back on whether it concurs with the appointment. About 10% of all appointments are reviewed by the Standing Committee.
Alberta	• In 2007, a Board Governance Review Task Force made a number of recommendations including that appointments had to be non-partisan, competency-based and made using a transparent and open process. In 2008, the Alberta government adopted the "Public Agencies Governance Framework" which confirms that a *"transparent, non-partisan and competence-based processes will be used".* An Agency Governance Secretariat was established to manage the implementation of the Framework and support ministries and agencies throughout the process. The following Principles are specified as now forming the basis of the appointment process: competency; agency engagement; transparency and openness; consistency; timeliness; and diversity. • All agency appointments are now publically advertised and actively recruited on a wide variety of mediums, as well as on the government's website (www.treasuryboard.alberta.ca/AgencyGovernanceSecretariat.cfm). Extensive information is provided on the position profiles and requirements. New polices on orientation, on remuneration, on ethics and conflicts of interest, and on evaluation of members are also provided. Agencies play an active role in the appointments process by ensuring position descriptions and qualifications are set out, screening is conducted and by providing a short list of 'top candidates' (ideally 2-5 for each vacancy) for consideration to the Minister.

(cont'd.)

Review of other Canadian jurisdictions

Jurisdiction	Appointment process
New Brunswick	• In 2004/5, New Brunswick published an Appointment Policy whose guiding principles are to ensure an open and transparent process and that appointments are diverse and merit-based. ABCs are required to advise government 180 days in advance of upcoming vacancies, and are encouraged to prepare position profiles and any other selection criteria. The government's website allows citizens to submit applications expressing a general interest in serving on an ABC (www2.gnb.ca/content/gnb/en/corporate/abc.html).
Nova Scotia	• Nova Scotia was the first to revise their appointments policies, and separates the process by type of board –adjudicative boards, defined as quasi-judicial boards that *"take evidence, make findings of fact and law, and make decisions affective a person's liberty, security or legal rights"*; and non-adjudicative boards, described as those that *"make financial, regulatory, business or policy recommendations/decisions that have far reaching implications for Nova Scotians."* Applications to adjudicative boards are screened by Departmental Advisory Committees who short list the 3-6 most qualified candidates for each position and provides it to the Minister. For non-adjudicative boards, the screening process is through Departmental Screening Panels established by the Minister, who review the applications but do not rank candidates. All minimally qualified candidates are forwarded to the Minister for consideration. • The Executive Council website lists both types of appointments, along with detailed information about the positions and expected qualifications and other relevant selection criteria (www.gov.ns.ca/exec_council/abc/). No information about current appointees, expiry dates or vacancies is provided, however vacancies for non-adjudicative boards are advertised widely in the bi-annual call for applications to board positions. • Non-adjudicative appointments may be reviewed by an all-party Human Resources Standing Committee of the Legislature, after they are approved by Executive Council. Adjudicative tribunal appointments are not subject to Standing Committee review. Unlike other such Standing Committees, Nova Scotia's has veto power, although it is rarely exercised.

(cont'd.)

Review of other Canadian jurisdictions

Jurisdiction	Appointment process
City of Winnipeg	• Improvements to the openness and accessibility of the City of Winnipeg's appointment process were announced in 2006. The City of Winnipeg website (www.winnipeg.ca/clerks/docs/boards/boards.stm) lists all boards and commissions to which City Council appoints, in whole or in part. The website also provides online application forms, as well as descriptions of each organization that includes the composition and member requirements for that board/commission. A link is also provided to the organization's website for further information. Each September, the City Clerk's Department initiates an annual selection process to fill citizen member positions to the boards and commissions on which there are imminent or existing vacancies. This includes placing advertisements in local newspapers, and Canadian citizens residing in Winnipeg are requested to apply by a November deadline.

Appointments of public sector officials and other stakeholder representatives

As noted previously, there are 63 civil servant appointments and 12 MLA appointments. With respect to the civil servant appointments, these are often cases where a Deputy Minster or other government official serves on an ABC as a function of their position. Civil servants are not remunerated for these positions. With respect to the 12 MLA appointments, these mostly represent appointments to the Round Table for Sustainable Development. The only exceptions are 2 MLAs who serve on 2 different Crown corporations. We noted that, as opposed to civil servants, some legislation does permit MLAs to be remunerated at the same rate as other ABC members. In such cases, their compensation is disclosed on government's annual *Report of Amounts Paid or Payable to Members of the Assembly.*

With respect to appointments to Crown corporations, many Canadian jurisdictions are discontinuing the practice of appointing public sector officials. As noted in a recent CICA publication, *"Public servants and elected officials, while bringing knowledge of government priorities and processes, may inhibit effective functioning of the board (for example, where the public servant or elected official becomes a 'super director' whom others defer to), and at times, may be in a conflict of interest position (where s/he has to provide advice or make decisions relating to the Crown corporation based on government objectives while, at the same time, participating in board discussions on the same issue where the considerations are only 'the best interests of the corporation."*[5]

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[5] Canadian Institute of Chartered Accountants, *20 Questions Directors Should Ask about Crown Corporation Governance*, 2007. www.cica.ca

In cases where it is deemed a necessity to have a public sector official, either a civil servant or elected official, sit on a Crown corporation, extra caution must be taken. To promote clarity around the role of the public sector official on the Board of Directors, a documented discussion of the implications and potential for conflicts of interest should occur at a Board meeting. A Board policy and protocol should be developed to appropriately manage any potential issues or conflict of interest situations which may arise. As this is not an easy issue for other members to raise, the public sector official should take the onus to be especially clear of their role when they are acting in their capacity as a Board member.

As well, many ABCs have members that are appointed by external stakeholders or who are representatives of specific community stakeholders. However, once being appointed to an ABC, that member is required to act in the best interests of the organization overall and leading governance practices suggest that members that are appointed in this manner should be vigilant in ensuring that representation of their stakeholder group does not conflict with acting in the best interests of the organization. Such members cannot simply represent or advocate on behalf of any one stakeholder, and must conduct themselves in a manner that does not result in any conflict of interest situations. Again, specific policies and protocols should be developed to appropriately manage any potential issues or conflict of interest situations which may arise.

Conflict of interest policies should specify that members in a potential (or even perceived) conflict of interest recuse themselves and not participate in any of the discussions on the issue and abstain from any decisions. Best practices require that members sign conflict of interest declaration forms on an annual basis, not just when they are first appointed. A member's situation can change from year to year, and conflicts that may not have been the case when first appointed may arise over the term of service. Also, revisiting the issue annually ensures clarity and serves as an important reminder of the member's responsibilities with respect to conflicts of interest.

Several Canadian jurisdictions require appointees to complete conflict of interest forms as a condition of their appointment, and make conflict of interest and code of conduct guidelines available on their ABC website.

We encourage government to develop conflict of interest and code of conduct policies and guidelines for members serving on ABCs.

Response of officials and summary of recommendations

The Government thanks the Office of the Auditor General for this report. This is the first time in the history of the province that a review of the agencies, boards and commissions (ABC) process by the Auditor has been undertaken and we welcome and accept all of the recommendations in the report as a means of modernizing and further improving the process that has existed in Manitoba for many decades.

The Government has been working towards a more open and easily accessible ABC process. As the report indicates, the Government has established Manitoba's first website, through Communications Services Manitoba, for agencies, boards and commissions. The site allows Manitobans to obtain information on ABCs and submit an application on-line. Our goal in designing the website was to make it user-friendly, and we currently are the only province that has a direct link into the ABC site from the Government's homepage. We will continue to develop this site.

In 2010 the Government, in co-operation with the Manitoba Crown Corporations Council, established an across government training and board development program. The program requires that all new board members attend an orientation session—this is in addition to the orientation they have traditionally received with respect to their particular board. The program also offers various governance based workshops for board chairs and directors. These sessions have been well received, and will go a long way towards providing board members with resources that will assist them in reaching their full potential as members of public sector boards, providing them with an opportunity to share ideas and expertise with their peers, and to further develop their knowledge on various aspects of board governance. New board members of administrative tribunals are also asked to attend a training session offered by the Manitoba Council of Administrative Tribunals.

The ABC office will review this report with Cabinet Ministers, Special Assistants and Deputy Ministers to ensure there is an understanding of the commitment to implementing the recommendations and improving the ABC appointment process. Our response to the recommendations contained in the report are as follows:

Recommendation 1: We recommend that the website include a complete list of all ABCs to which government makes appointments.

> ***Response:*** The ABC office has collected a list of all ABCs and will update the website to include any ABCs not currently listed. The ABC office will also be working with staff in departments to standardize the information on these ABCs to ensure consistency across government.

Recommendation 2: We recommend that a central repository for all ABCs be established.

> *Response:* The ABC office will become the central repository for all ABCs. The ABC office has collected information for all ABCs to which departments make appointments and will continue to gather that information so that it can be housed in one central office. The ABC office will work with departments to ensure they are aware the ABC office is the new central repository for ABC appointments and that all information regarding new and existing ABC entities be shared with them.

Recommendation 3: We recommend that the Cabinet Committee on ABCs define and implement guidelines for the selection of ABCs to be included in their process.

> *Response:* The Government agrees that consistency across government in this area is important and the ABC Committee of Cabinet will develop guidelines that apply to all departments.

Recommendation 4: We recommend that the website be updated to include a description of the appointment process.

> *Response:* The website has been updated to include a description of the appointment process. Regular updates to the ABC website will continue to be ongoing.

Recommendation 5: We recommend that the appointment process begin sufficiently in advance of term expiries to allow all appointments/reappointments to be made in time for the expiry dates.

> *Response:* The Government agrees that it is important that appointments and reappointments be kept current, and our goal is to have new appointments and reappointments in place prior to the expiry date. The ABC office will continue to work closely with Cabinet Ministers and Special Assistants to ensure this goal is achieved.

Recommendation 6: We recommend that all Ministers offices contact the ABCs sufficiently in advance of term expiries to discuss the needs and requirements for new appointments/reappointments.

> *Response:* The ABC office has begun providing Minister's offices six months notice, instead of the previous four months, of upcoming expiry dates. This additional two months notice will ensure there is sufficient time for Ministers' offices to contact the ABCs in advance of appointment expiry dates. The ABC office will continue to work with Cabinet Ministers

and Special Assistants to ensure that ABCs are contacted regarding appointments and reappointments.

Recommendation 7: We recommend that, while legislation permits incumbent appointees to continue past their term expirations, Ministers ensure that all ABC appointments are current and reappointments of term expiries are kept up-to-date.

Response: The Government is committed to the goal of having new appointments and reappointments in place prior to terms expiring, allowing appointments to continue past their expiry date only when unavoidable circumstances occur. Since August 1, 2011, over 100 appointments have been brought up to date.

Recommendation 8: We recommend that appointments to ABCs have staggered terms, so that there is an orderly transition of new and more experienced members serving the ABC.

Response: The ABC Committee of Cabinet, as well as all Cabinet Ministers and Special Assistants will be advised that in all cases, term expiry dates for ABCs must be staggered.

Recommendation 9: We recommend that government set term limits which include a maximum years of service, to complement the requirements of the ABC.

Response: The ABC Committee will be asked to consider this issue and develop appropriate guidelines with respect to term limits that will both allow ABC members to develop sufficient knowledge to serve the board well, while also ensuring this is balanced with the need for renewal and opportunity for others to serve. The Government will immediately begin to review the appointments of members that have been in place for 10 years or longer with a view to replacing members as their appointments expire, in order to provide for the renewal of board membership.

Appendix A: Agencies, Boards and Commissions

The Cabinet Committee on Agencies, Boards and Commissions lists the following 200 ABCs as those that are being tracked through their process, as of July 2011. It should be noted that for some ABCs not all members are appointed by government. The ABCs shown in italics do not allow for citizen appointments, and are composed of the following categories of members:

- * *only civil servants*
- ** *civil servants and representatives from designated organizations external to government*
- *** *only representatives from designated organizations external to government*

Note that, as discussed in Section 1.2 of the report, this is not a complete list of all ABCs in the Province.

Agencies, Boards and Commissions tracked by Cabinet Committee on ABCs

Department	ABC
Aboriginal and Northern Affairs	• Communities Economic Development Fund • Northern Affairs Capital Approval Board • Boxing Commission • Sport Manitoba • Sport Manitoba - Manitoba Games Council
Advanced Education and Literacy	• Assiniboine Community College Board of Governors • Brandon University Board of Governors • College universitaire de Saint-Boniface Board of Governors • Council on Post-Secondary Education • Louis Riel Institute • Private Vocational Institutions Industry Relations Committee • Red River College Board of Governors • University College of the North Governing Council • University of Manitoba Board of Governors • University of Winnipeg Board of Regents

(cont'd.)

Agencies, Boards and Commissions tracked by Cabinet Committee on ABCs

Department	ABC
Agriculture, Food and Rural Initiatives	• Agricultural Crown Lands Appeal Board • Agricultural Producers' Organization Certification Agency • Agri-Food Research and Development Initiative Program Council (ARDI) • Animal Care Appeal Board • Farm Machinery Board and Equipment Board • Farm Practices Protection Board • *Crown Lands Act Stakeholders Committee* * • Keystone Centre – Board of Directors • Manitoba Agricultural Services Corporation • Manitoba Agricultural Services Corporation Appeal Tribunal • *Manitoba Association of Agricultural Societies Advisory Board* ** • Manitoba Farm Lands Ownership Board • Manitoba Farm Products Marketing Council • Manitoba Horse Racing Commission • *Manitoba Milk Prices Review Commission* * • Manitoba Veterinary Medical Board Peer Review Committee (formerly Veterinary Medical Board) • Manitoba Women's Institute Provincial Board • Prairie Agriculture Machinery Institute Board of Directors • Veterinary Services Commission
Conservation	• Beverly-Quamanirjuaq Caribou Management Board • *Geographical Names Board of Canada* ** • Certification Advisory Committee • Ecological Reserves Advisory Committee • Endangered Species Advisory Committee • Manitoba Active Transportation Advisory Group • Manitoba Hazardous Waste Management Corporation Board • Manitoba Round Table for Sustainable Development • Manitoba's Clean Environment Commission • *Saskeram/Summerberry Wildlife Management Area Advisory Committee* ** • Wabanong Nakaygum Okimawin (formerly known as East Side Lake Winnipeg Round Table) • *West Region Elk Management Board* ** • Whiteshell Advisory Board

(cont'd.)

Agencies, Boards and Commissions tracked by Cabinet Committee on ABCs

Department	ABC
Culture, Heritage and Tourism	• Brandon Centennial Auditorium Corporation • Centre Culturel Franco-Manitobain • Heritage Grants Advisory Council • Manitoba Arts Council • Manitoba Centennial Centre Corporation • Manitoba Film and Music • Manitoba Film Classification Board • Manitoba Heritage Council • Manitoba Museum • Public Library Advisory Board • Travel Manitoba • Winnipeg Art Gallery • Venture Manitoba Tours - Board of Directors
Education	• Board of References • Certificate Review Committee (CRC) • *Collective Agreement Board* *** • Dispute Resolution Review Committee • *Public Schools Finance Board (PSFB)* * • Teachers' Retirement Allowances Fund Board (TRAF)
Entrepreneurship, Training and Trade	• Apprenticeship and Certification Board • Convention Centre Corporation Board of Directors • *Manitoba Development Corporation* * • Manitoba Opportunity Fund • *Manitoba Trade and Investment Corporation* * • Taking Charge!
Family Services and Consumer Affairs	• Child Care Staff Qualifications Review Committee • *Chiropractic Review Panel* *** • General Child and Family Services Authority – Board of Directors • Social Services Appeal Board • Vulnerable Persons Hearing Panel Roster • Companies Office Advisory Board • Deposit Guarantee Corporation of Manitoba • Funeral Board of Manitoba • Insurance Agents' and Adjusters' Licensing Appeal Board • Insurance Councils • Landlord and Tenant Advisory Committee • Manitoba Association of Architects Council • Manitoba Association of Home Economists • Professional Interior Designers Institute Executive Council • Property Registry Advisory Committee • Vital Statistics Agency Advisory Committee • Automobile Injury Compensation Appeal Commission • Manitoba Liquor Control Commission - Board of Commissioners • Manitoba Liquor Control Commission - Licensing Board • Public Utilities Board • Residential Tenancies Commission

(cont'd.)

Agencies, Boards and Commissions tracked by Cabinet Committee on ABCs

Department	ABC
Finance	• Civil Service Commission Board • Civil Service Superannuation Board • *Civil Service Superannuation Board Finance and Audit Committee **** • *Civil Service Superannuation Board Investment Committee *** • Crown Corporations Council • Manitoba Hydro- Electric Board • Manitoba Securities Commission
Health	• CancerCare Manitoba • College of Dental Hygienists of Manitoba • College of Dietitians of Manitoba (formerly known as Manitoba Association of Registered Dietitians) • College of Licensed Practical Nurses of Manitoba • College of Medical Laboratory Technologists of Manitoba • College of Occupational Therapists of Manitoba (formerly known as Association of Occupational Therapists of Manitoba) • College of Physicians and Surgeons of Manitoba • College of Physiotherapists of Manitoba • College of Registered Nurses of Manitoba • College of Registered Psychiatric Nurses of Manitoba • Denturist Association of Manitoba Board of Directors • Health Information Privacy Committee • *Health Information Standards Council **** • Health Professions Advisory Council • Hearing Aid Board • Manitoba Adolescent Treatment Centre • Manitoba Association of Optometrists • Manitoba Association of Registered Respiratory Therapists • Manitoba Centre for Health Policy and Evaluation • Manitoba Chiropractors Association • Manitoba Dental Association • *Manitoba Drug Standards and Therapeutics Committee **** • Manitoba Health Appeal Board • Manitoba Institute for Patient Safety • Manitoba Pharmaceutical Association • Manitoba Speech and Hearing Association • Medical Review Committee • Mental Health Review Board • Provincial Imaging Advisory Committee • *Provincial Mental Health Advisory Council *** • Rehabilitation Centre for Children • Sanatorium Board of Manitoba • Seven Oaks General Hospital

(cont'd.)

Agencies, Boards and Commissions tracked by Cabinet Committee on ABCs

Department	ABC
	REGIONAL HEALTH AUTHORITIES: • Assiniboine Regional Health Authority Inc. • Brandon Regional Health Authority Inc. • Burntwood Regional Health Authority Inc. • Central Regional Health Authority • Churchill Regional Health Authority • Interlake Regional Health Authority • NOR-MAN Regional Health Authority • North Eastman Health Authority • Parkland Regional Health Authority • South Eastman Health/Santé Sud-Est Inc. • Winnipeg Regional Health Authority
Healthy Living, Citizenship and Youth	• Addictions Foundation of Manitoba • Manitoba Council on Aging
Housing and Community Development	• Cooperative Loans and Loans Guarantee Board • Cooperative Promotion Board • Manitoba Community Services Council
Infrastructure and Transportation	• CentrePort Canada Inc. – Board of Directors • Firefighters, Peace Officers, and Workers Memorial Foundations • Land Value Appraisal Commission • Licence Suspension Appeal Board • *Manitoba Water Services Board *** • Motor Transport Board and Highway Traffic Board • *Special Operating Agency – Advisory Board ** • Taxicab Board • Disaster Assistance Appeal Board • Manitoba Lotteries Corporation Board of Directors
Innovation, Energy and Mines	• *Economic Innovation and Technology Council ** • Industrial Technology Centre - Advisory Board • *Manitoba Education, Research and Learning Information Networks (MERLIN)**** • Manitoba Health Research Council • Mining Board • Surface Rights Board • Gaming Control Commission

(cont'd.)

Agencies, Boards and Commissions tracked by Cabinet Committee on ABCs

Department	ABC
Justice	• Community Notification Advisory Committee • Helen Betty Osborne Memorial Foundation • Judicial Compensation Committee • Judicial Council • Judicial Inquiry Board • Legal Aid Management Council • Manitoba Human Rights Commission – Adjudicators • Manitoba Human Rights Commission – Board of Directors • Manitoba Law Foundation • Manitoba Law Reform Commission • Manitoba Review Board • Manitoba Public Insurance - Board of Directors • Manitoba Public Insurance - Rates Appeal Board
Labour and Immigration	• *Advisory Council on Workplace Safety and Health* *** (except for Chair, which is generally based on a consensus decision between government and stakeholders) • Arbitration Advisory Sub Committee (LMRC) • *Labour Management Review Committee* ***(except for Chair, which is generally based on a consensus decision between government and stakeholders) • *Manitoba Labour Board* *** • Manitoba Pension Commission • Office of the Fire Commissioner – Special Operating Agency Advisory Board • Manitoba Women's Advisory Council • Workers Compensation Act Review Committee • Workers Compensation Board - Appeal Commission • Workers Compensation Board – Board of Directors • Workers Compensation Board – Medical Review Panel
Local Government	• Forks North Portage Partnership (FNPP) Board of Directors • Municipal Board
Water Stewardship	• Conservation District Boards • Conservation Districts Commission • Freshwater Fish Marketing Corporation • Lake Manitoba Stewardship Board • Manitoba Conservation Agreements Board • Manitoba Habitat Heritage Corporation • Manitoba Water Council • *Prairie Provinces Water Board* *

Appendix B: Review of Canadian jurisdictions website information on ABCs

We reviewed the government websites of all Canadian jurisdictions, including Manitoba's current updated website. We examined the public information available regarding ABCs and the appointment process. The following chart provides a comparison of key characteristics of each website.

Jurisdiction	MB	Can	BC	AB	SK	ON	PQ	NB	NS	PEI	Nfld
Website features											
ABC information on website	✓	✓	✓	✓		✓	✓	✓	✓	✓	
From homepage	✓										
1 level			✓	✓		✓	✓				
More levels		✓							✓	✓	
Provides information on ABCs	✓	✓	✓	✓		✓	✓*	✓*	✓*	✓	
Listed by department	✓	✓	✓	✓		✓					
Listed by alpha		✓	✓	✓		✓					
Appointment process		✓	✓			✓		✓*	✓		
Some information				✓						✓	
Application form	✓	✓[1]	✓		✓[2]	✓				✓	
Can apply online	✓	✓[1]	✓			✓		✓	✓*		
Advertises vacancies		✓	✓			✓		✓	✓	✓	
Names new appointee			✓			✓	✓	✓	✓	✓	
FAQs section		✓	✓			✓					
Conflict of interest policy		✓	✓	✓		✓					
Codes of conduct		✓	✓*	✓*		✓					
Governance policies		✓	✓	✓		✓					

* Slight variation but still meets category.

[1] Separate application forms exist for each organization, and individuals apply directly to the organization.

[2] SK provides application forms for Regional Health Authorities.

Appendix C: Sample skills/competency matrix

ABCs need members with a variety of qualifications and competencies in order to carry out their mandate. A diverse mix of experience, age, gender and culture can bring valuable perspectives, options, and insights to the ABC. As the challenges faced by an ABC change over time, the composition of members and the expertise which may assist the organization should also evolve over time.

Leading practices suggest that ABCs take a proactive approach in recruitment by maintaining current inventories of member skills and competencies, and identifying any existing gaps or requirements for future membership. The development of a skills/competency matrix such as the sample below can provide useful information to the Minister's office when vacancies arise. This information helps inform the recruitment process, and assists in the Minister's consideration of appropriately qualified candidates.

Recognizing the political nature of public sector appointments, the specific choice of individual to fill the appointment appropriately rests with the Minister and Government. While there is certainly no onus on the Minister to appoint according to the ABC's preferred competencies, the provision of such information to the Minister ensures s/he is aware of any gaps or requirements of the ABC. This may enhance the likelihood of attaining members with such competencies in a future appointment.

The sample that follows provides a generic list of skills, competencies, and characteristics that a member may have. The specific skills and characteristics of members will vary for each ABC, depending on the specific role and mandate of that ABC. Each ABC should develop their own list specific to their needs. We note that a number of Manitoba's ABCs have already developed competency matrices that are specific to their organization, and shared these with us in our interviews.

Related Industry/Sector Experience									✓		
Business/Management Experience	✓	✓				✓					
Government/Public Sector Experience		✓	✓				✓				
Accounting/Financial Expertise									✓		
Legal/Regulatory Expertise			✓								
Human Resources Expertise					✓						
Marketing/Communication Expertise				✓			✓				
IT/e-commerce/Social Media Expertise							✓				
Leadership Skills	✓								✓	✓	
Project Management Skills		✓				✓	✓				
Past Board Experience	✓		✓	✓	✓			✓	✓	✓	
Strategic Planning Skills	✓	✓	✓			✓	✓				
Risk Management			✓			✓	✓				
Community Relations/Liaison Skills				✓	✓			✓			
Community Diversity/Geographic Rep.	✓		✓	✓	✓			✓		✓	
Stakeholder Representation				✓		✓			✓		
...etc.											
...etc.											

Web Version

Chapter 3

Animikii Ozoson Child and Family Services Agency

First Nations of Southern Manitoba Child and Family Services Authority

Department of Family Services and Consumer Affairs

Executive management
Carol Bellringer
Jack Buckwold

Principal
Brian Wirth

Auditors
John Donnelly
Jacqueline Ngai

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Main points

What we examined

On October 24, 2005, Animikii Ozoson Child and Family Services Agency (Agency) was mandated by the First Nations of Southern Manitoba Child and Family Services Authority (Authority), for the purpose of providing child and family services under *The Child and Family Services Act* and *The Adoption Act* to persons for whom the Authority is responsible. The Agency is unique in that it provides culturally appropriate services in Winnipeg for mostly aboriginal families and children who have cultural ties and affiliations to the First Nations of Ontario.

We examined financial accounting processes and controls of the Agency, and senior management and Board compensation and expenses. Our audit also included a review of governance practices and an assessment of the Agency's compliance with its funding agreement with the Authority. We did not audit the quality of child care provided by the Agency.

Why it matters

The provision of child and family service programs across Manitoba is a critical and demanding responsibility, and there is a significant annual cost to provide these programs. According to the Family Services and Consumer Affairs Annual Report, funding provided to the Authorities and mandated agencies, was in excess of $250 million for the year ended March 31, 2010. Also, since 2003, when *The Child and Family Services Authorities Act* was proclaimed, there has been a major devolution of authority and responsibility to the Authorities, including the responsibility to mandate, fund, and monitor agencies.

What we found

The Agency has incurred operating deficits over the past several years and has an accumulated deficit in excess of $450,000. They have retained funds in excess of $3.4 million which are owing to the Province, to maintain its cash flow. Since its mandate in 2005, the Agency has expressed concerns to the Authority that the operational funding is not adequate. This funding model has now been revised.

Our audit did not include a full analysis of the causes of the deficits nor an assessment of the adequacy of the revised funding model to address shortfalls and cash flow needs. However, we found several areas that must be addressed to provide for ongoing monitoring and control of the Agency and to protect against the risk of financial irregularities.

Governance practices at the Agency need to be strengthened, including financial oversight. Board members expressed concerns about their ability to recruit new members and the lack of financial expertise on the Board. Both are critical to ensure proper control and monitoring of the Agency.

We examined the internal controls around the preparation of bank reconciliations and the processing of payments. A number of internal control weaknesses were discovered and are described in this report. It is important to note that although these weaknesses appear to be occasional exceptions, they show a lack of segregation of duties which means an irregularity could take place and be covered up by the same individual. While the internal control environment has weaknesses and exposes the Agency to unnecessary risk, we did not find any examples of inappropriate transactions. Also, the Agency does not have a conflict of interest policy, which is a requirement of the funding agreement between the Agency and the Authority. We found examples of conflicts of interest which such a policy should address. Policies were also missing about the types of expenses that are allowed for Board members and staff, Board compensation and employee advances.

While our original objectives did not include the examination of foster home licenses and places of safety, concerns came to our attention and we extended our work on those areas. We found that foster homes were not consistently reviewed and re-licensed annually and that the Child and Family Service Information System (CFSIS) was not accurate concerning foster home licenses and children in care. Similar issues were reported in our 2006 Report entitled *Audit of the Child and Family Services Division Pre-Devolution Child in Care Processes and Practices* and we would have expected these areas to have been remedied within Agencies.

Background

Legislation

In 2000, in response to recommendations made in the Aboriginal Justice Inquiry – Child Welfare Initiative, a major restructuring of the child and family service system began in Manitoba. In 2003, *The Child and Family Services Authorities Act* (Act) was proclaimed. The Act created four Child and Family Services Authorities – the First Nations of Southern Manitoba Child and Family Services Authority, the First Nations of Northern Manitoba Child and Family Services Authority, the Métis Child and Family Services Authority, and the General Child and Family Services Authority. The Act set out the board appointment process, which enables the Assembly of Manitoba Chiefs Secretariat Inc. on the recommendation of the Southern First Nations members of the Assembly, the Manitoba Keewatinowi Inc., the Manitoba Métis Federation Inc., and the Minister to appoint the board members to these respective Authorities.

Prior to the creation of the Authorities, child and family services were mainly provided by a number of mandated agencies funded by, and responsible to, the Department of Family Services and Housing (now the Department of Family Services and Consumer Affairs). The Act provided for a major devolution of authority and responsibility to the Authorities, including the responsibility to mandate, fund, and monitor agencies. The mandated agencies now report to the four Authorities. The Act also devolved many of the duties of the Director of Child and Family Services to the Authorities.

Despite the devolution of responsibilities, given that the Manitoba Legislature proclaimed the Act, the Province retains overall responsibility for ensuring that appropriate outcomes are achieved.

Funding

Manitoba Family Services and Consumer Affairs (Department) is the sole funder of the Authorities. Funding is provided to the Authorities through Contribution Agreements outlining conditions under which the funding is provided. Department funding is provided to ensure each Authority is able to operate and carry out its responsibilities and to ensure the requirements of its mandated agencies are met.

Under a proposed harmonized funding model (between the Provincial and Federal Governments) First Nation mandated agencies that currently receive federal funding will be funded for key core positions jointly by the Provincial and Federal Governments. Agency core funding will be provided utilizing a 60 per cent/40 per cent provincial/federal split. This is based on the breakdown of provincial/

federal children in care for those agencies at the time of model development. For all other mandated agencies, including the Agency, the Province remains the sole funder. In all cases, funding levels are expected to increase.

Child maintenance costs incurred by mandated agencies are billed to the funder (either the Department and/or the Federal Government) and the agencies are reimbursed for eligible costs. The responsibility for managing child maintenance has not yet been devolved to the Authorities.

Animikii Ozoson Child and Family Services Agency

Animikii Ozoson Inc. was incorporated on February 3, 2005 under the laws governing corporations in Manitoba and was given a province-wide mandate as Animikii Ozoson Child and Family Services Agency (Agency) on October 24, 2005 by the First Nations of Southern Manitoba Child and Family Services Authority (Authority). The Agency is unique in that it provides culturally appropriate services in Winnipeg for mostly aboriginal families and children who have cultural ties and affiliations to the First Nations of Ontario.

In October 2005, 234 cases were transferred to the Agency, comprised mostly of families and children generally affiliated with First Nations/communities in Northwestern Ontario. The transferred cases also included other out-of-province and Manitoba cases (aboriginal and non-aboriginal) that were not affiliated with Manitoba First Nations Child and Family Services Agencies and where the families chose the Southern Authority for culturally appropriate service.

Since the Agency provides services to families and children off reserve it does not receive any federal funding; it is funded by the Department only.

Audit objectives and scope

Our initial audit objectives were as follows:

Governance (Section 2)

- To review board governance practices of the Agency's Board of Directors.

Expenditures (Section 3)

- To document and assess financial accounting processes and controls
- To examine financial and human resource policies in place
- To examine senior management compensation and expenses
- To examine Agency Board of Director compensation and expenses.

Compliance with Funding Agreement (Section 6)

- To determine if the Agency is in compliance with the key terms and conditions of its funding agreement with the Authority.

In addition to our initial audit objectives, we decided to examine the financial operating results of the Agency (Section 1), Foster Home Licenses in place and Places of Safety (Section 4), and a program referred to as Thunderbird Nest Children and Family Centre (Section 5). These are matters which came to our attention during the course of the audit.

The audit primarily covered the two year period from April 1, 2009 to March 31, 2011 and was conducted between May 2011 and October 2011. We examined available Agency and Authority documentation and correspondence and we met with the Agency's Board of Directors and senior staff of the Agency and Authority.

Audit findings and recommendations

1. Operating deficits/funding

1.1 The Agency incurred a significant accumulated operating deficit over the last 5 years

As discussed in the Background section, the Agency receives its operational funding from the Authority. Child maintenance costs incurred by the Agency are billed to the Department and the Agency is reimbursed for eligible costs.

Table 1 is a summary of the Agency's revenues and expenditures, and net assets for the years ended March 31, 2007 to March 31, 2011. Over this 5 year period the Agency has incurred net operating losses amounting to $1,116,564 (operating surplus/deficit before maintenance).

Table 1: Summary of Revenues and Expenditures, and Net Assets

	2006/07	2007/08	2008/09	Restated 2009/10	Unaudited 2010/11
Operating Revenue	$ 1,066,454	$ 1,674,053	$ 2,062,487	$ 1,939,823	$ 2,770,069
Operating Expenses	999,893	1,675,210	2,513,623	2,601,687	2,839,037
Operating Surplus/ (Deficit) before Maintenance	66,561	(1,157)	(451,136)	(661,864)	(68,968)
Maintenance Revenue	3,853,789	4,265,047	5,924,691	7,953,990	8,700,951
Maintenance Expenses	3,512,086	4,070,519	5,871,699	7,632,177	8,921,436
Maintenance Surplus/ (Deficit)	341,703	194,528	52,992	321,813	(220,485)
Deficiency of Revenue over Expenses	408,264	193,371	(398,144)	(340,051)	(289,453)
(Deficit) Net Assets, beginning of the year	89,879	498,143	691,514	176,808	(163,243)
(Deficit) Net Assets, end of the year	$ 498,143	$ 691,514	$ 293,370	$ (163,243)	$ (452,696)

Source: Agency's audited financial statements, draft financial statements for 2010/11

According to the Agency's draft financial statements as at March 31, 2011, the Agency's Net Assets were in a significant deficit position. Also, Agency documentation we examined states the Agency has kept Children's Special Allowances (CSA). Child and Family Services agencies, as guardians of children in care, apply for and receive these federal CSA benefits. Manitoba reimburses agencies for the costs of child maintenance, and requires agencies to remit these CSA benefits to the Province.

The Agency has not remitted any CSA dollars received. The Agency used these dollars to maintain cash flow and to cover some operating costs. It owes the Province in excess of $3.4 million, according to the draft financial statements as at March 31, 2011. In January 2011, the Department wrote a letter to the Agency and the Authority requesting a meeting to set a repayment schedule. At this time, an agreement for the repayment of these funds has not been finalized.

When we asked senior management about the reasons for the operating deficits they stated the staff positions being funded were well below the actual number of Agency staff and that the number of staff had to be increased due to the increase in children in care but funding levels are not keeping up. However, they were not able to provide us with details of how the annual operating funding was calculated by the Authority, such as which specific positions were included in the funding. They also referred to the 2006 Report Co-Chaired by the Children's Advocate, Manitoba Ombudsman, and the Executive Director of Tikinagan CFS titled Strengthen the Commitment an External Review of the Child Welfare System. The report stated that the Agency did not receive adequate funding when it was created due to the loss of economies of scale, specifically for its executive. It recommended that the Agency be reviewed to determine an appropriate level of funding to allow it to operate with a management structure that does not require that funding for workers is reduced.

In meetings with senior management we were told that officials of the Authority advised them not to finalize their March 31, 2011 audit until the proposed new funding model was approved. In August 2011, the Authority advised the Agency that based on the new funding model the Agency would be receiving an additional amount of approximately $691,000 for agency core/protection funding. This amount is reflected in the March 31, 2011 operating revenue amount in Table 1 above. The additional funding for the 2010/11 fiscal year is for one-half of the year only. Even with this additional funding the Agency still incurred an operating deficit of $68,968 for 2010/11, however the new funding model will be in effect for the entire 2011/12 fiscal year.

> **Recommendation 1:** We recommend that the Agency finalize the repayment schedule for the CSA funds owing to the Province.
>
> **Recommendation 2:** We recommend that the Authority provide the Agency with a detailed breakdown of its operating funding.
>
> **Recommendation 3:** We recommend that the Authority, in collaboration with the Agency, review the impact of the new funding model assumptions on the Agency and ensure that the funding inequities have been resolved.

2. Governance

As one objective of our audit, we examined the governance practices of the Agency's Board of Directors (the Board) from April 1, 2009 to March 31, 2011. Our work consisted of a review of the Agency's By-laws, meeting minutes and Agency policies and procedures. We also met with current members of the Board and Agency staff.

According to the Agency's By-law, the Agency may have a minimum of 3 and a maximum of 7 Directors. During our period of review, there were 4 individuals on the Board. The By-law states that the Board shall meet at least quarterly and unless required, no meetings will be held in July or August. There is a provision in the By-law allowing for special meetings of the Board to be called at any time by any member of the Board or by the Executive Director.

In conducting this section of the audit, we examined the Board's progress to implement what we consider to be key governance practices of a board.

The following governance practices have been fully implemented or are in the process of being implemented by the Agency:

- The Agency has vision and mission statements which are included in its Annual Reports along with other related matters such as the core values and service challenges of the Agency
- The Board has recently approved a long range strategic plan for the Agency. This plan has been forwarded to the Authority for approval
- The Board holds an Annual General Meeting where it approves and accepts the Annual Report and appoints auditors for the following year. The Annual Report includes audited financial statements
- The Board conducts performance evaluations of its Executive Director
- The Board is in the process of conducting a Board evaluation.

During our audit, we also identified a number of areas where governance practices of the Board could be improved. These areas are discussed below.

2.1 Lack of financial oversight by the Board

In another section of this report we discussed the operating deficits the Agency has incurred and the significant accumulated deficit of the Agency as at March 31, 2011. As a result, it is important that the Board provides an appropriate level of financial oversight over the financial operations of the Agency.

Board of Directors Executive Committee

Effective October 1, 2005, the Board approved terms of reference for the Board of Directors Executive Committee (Committee). Some of the responsibilities of the

Committee, as outlined in the terms of reference, were:

- To fulfill the role of a finance committee and review the detailed financial reports of the Agency, oversee the audit process and provide a summary report for the full Board
- To evaluate the work performance of the Executive Director
- To review and approve travel, meals, accommodations, and other expense claims submitted by the Executive Director.

The initial membership of the Committee was to include the 3 initial Board members. Subsequently, the composition of the Committee was to include the 4 officers of the Board (Chairperson, Vice-Chairperson, Secretary, and Treasurer) and 1 other member appointed by the Board.

Agency staff told us the Committee was started but because of the low number of Board members it never really got going. Unfortunately, as discussed in the following sub-sections, the financial oversight duties of the Committee are not being done in most instances.

Operating budget

From our review of Board minutes there was no documentation to indicate that the Board reviewed and approved the operating budget for 2009/10. Further, there was no documented discussion in Board minutes of the potential for a significant operating deficit for the year until the January 28, 2010 Board meeting when the fiscal year was almost over. At this meeting, it was discussed that there would be an operating deficit of approximately $133,000 and that all expenditures, other than for children in care, must stop now. The actual operating deficit for the year ended March 31, 2010 was $661,864.

The 2010/11 operating budget was not approved until November 2010 when more than half of the year was already over.

The Board should be more involved in the operating budget process and approve the budgets on a timely basis.

Audit oversight

Our review of Board minutes showed that the Annual Report (which includes the Agency's Financial Statements and Auditor's Report) is being approved at the Annual General Meeting. However, there was no evidence that the Board met with the auditors at the beginning of the audit to discuss their audit plans or at the conclusion of the audit to discuss the audit results. Audit oversight duties (Audit Committee duties) are an important part of a board's financial oversight responsibility.

Approval of Executive Director's expenses

From discussions with Agency staff and our audit tests we determined that the Board does not review and approve the Executive Director's expenses. The review and approval of the Executive Director's expenses is another important part of a board's financial oversight responsibility.

2.2 Board recruitment issues/lack of financial expertise on the Board

Based on our interviews with Board members, a common issue raised was the need to increase the number of Board members and that they are having difficulties recruiting new members. With only four members on the Board, current members voiced concerns on the difficulties around voting and arranging meeting times while attempting to maintain a quorum.

Most of the members said the Board lacked financial expertise. They told us that a previous Board member, who passed away in 2010, did have the necessary financial expertise and would ask questions related to the Agency's finances.

Agency staff also had concerns with the number of Board members and the lack of financial expertise on the Board.

2.3 Minute items requiring action not being followed-up

During our review of the Meeting minutes, we noted several instances where an action was required on a certain issue, but we could not find any indication afterwards that the issue was followed-up. These items included:

- A recommendation to re-establish the finance committee (February 20, 2009)
- The need for a cost benefit analysis to be completed for the Pedro Lake Centre (February 20, 2009) – see Section 5
- A suggestion for the Board to help develop a finance spending policy (August 26, 2009)
- A note to begin developing a document outlining the Agency's funding needs and the fact that they are underfunded (November 24, 2009).

Agency staff told us none of the above items has been completed at this time.

Minute items requiring action should be documented and recorded as an item for follow up in subsequent Meeting minutes until the required action has been completed or the Board approves that the item should be removed.

> **Recommendation 4:** We recommend that the Board review in detail and approve the Agency's annual operating budget on a timely basis.

Recommendation 5: We recommend that the Board meet with the external auditors at the beginning of the audit to discuss the Audit Plan and at the end of the audit to discuss audit results and any management letter recommendations.

Recommendation 6: We recommend that the Board review and approve the Executive Director's expenses, and any other benefits paid to or on behalf of the Executive Director.

Recommendation 7: We recommend that the Agency develop a plan to recruit Board members with financial expertise.

Recommendation 8: We recommend that the Board track actions that need to be completed. These items should be documented in subsequent Meeting minutes until the required action has been completed or the Board approves that the matter should be removed.

3. Expenditures

3.1 Internal control environment

We examined the internal controls around the preparation of bank reconciliations and the processing of payments. A number of internal control weaknesses were discovered and they are presented below. It is important to note that although these weaknesses appear to be occasional exceptions they show a lack of segregation of duties in the Finance department meaning there is a risk that an individual could initiate an inappropriate transaction without it being detected.

Of specific concern is the fact that the Director of Finance is currently responsible for signing cheques, preparing and approving cheque requisitions, receiving bank statements, and completing the bank reconciliation. Ideally, these duties should be separated so that the risk for fraud and cover-up is reduced. If segregation of duties is not possible, then alternative controls (such as checks and reviews by individuals other than the preparer) should be implemented.

The control environment is supported by a manual accounting system with paper-based files and electronic spreadsheets. This increases the chance of human error and makes it very time consuming to prepare financial reports. A commercial accounting package has been purchased but is not in full use yet.

While the internal control environment has weaknesses and exposes the Agency to unnecessary risk, we did not find any examples of inappropriate transactions.

Our specific findings are as follows:

3.1.1 Bank reconciliations do not include the date the reconciliation was prepared

In our review of the bank reconciliations, we noted that bank reconciliations were not dated. As such, it was not possible to see whether the reconciliations were performed in a timely manner. Such timeliness is important as it allows for potential errors to be caught, better management of outstanding cheques, and keeps the account accurate and up-to-date.

3.1.2 Bank reconciliations are not approved

It was noted that none of the bank reconciliations were reviewed and approved by the preparer's supervisor. This review and approval procedure is important, particularly when there is a lack of segregation of duties in an organization.

In reviewing the areas above, we noted that the majority of bank reconciliations were manually prepared using Excel, and they were not approved once completed. Given that the reconciliations are manually prepared, there is a risk of human error and without a review, potential errors could go undetected.

3.1.3 Conflict of interest with cheque signing

We found cheques that were written to a payee who also:

- Signed the cheque, or
- Signed the cheque and approved the cheque requisition.

The person receiving the cheque should not sign the cheque as well. It is also inappropriate for the person receiving the cheque to sign the cheque and approve the cheque requisition. Both situations are a conflict of interest which increases the risk that fraud could occur. The delegation of authority for cheque signing should list enough individuals to cover off cheque signing duties to avoid such conflicts.

3.1.4 Cheques require two signatures, but exceptions occurred

In our review of cheques, we came across 2 cheques which only had 1 approval signature. Although there was only 1 signature on these cheques they cleared the bank.

> **Recommendation 9:** We recommend that bank reconciliations be prepared in a timely manner, and that they should be dated.

> **Recommendation 10:** We recommend that bank reconciliations be checked and approved by an individual other than the preparer.

Recommendation 11: We recommend that the delegation of authority for cheque signing be created such that there are enough individuals to sign cheques so that the payee does not sign his/her own cheque.

3.2 Senior management expenses

3.2.1 Most credit card charges are not subject to a formal review and approval process

The Agency does not have an overall spending policy for senior management expenses

Some credit card charges did not have adequate supporting documentation

Most senior management expenses were incurred on Agency credit cards. Members of senior management made charges to 4 Agency credit cards during the period of our audit:

- Executive Director, (limit, $5,000; raised to $10,000 at December 3, 2010)
- Finance Director, (limit, $20,000)
- Supervisors (2), (limit per credit card, $1,000).

Other staff may request that credit card purchases be made and these are made with the Finance Director's credit card. The employee is required to prepare a memo in a standardized format, as to the nature and reason for the expenditure, and with the Finance Director's approval the charge is made.

Management acknowledged that sufficient appropriate documentation should support purchases and that receipts should be originals. The Finance Director is responsible for reconciling all statement items to supporting documentation and preparing and approving the cheque requisition for the payment of the monthly statement balance.

All credit card purchases were reviewed and reconciled by the Finance Director. However, the Finance Director's expenses were not reviewed and approved by the Executive Director, and as discussed in Section 2, the Executive Director's expenses were not reviewed and approved by the Board.

Table 2 summarizes expenses paid by the Agency for charges incurred with Agency credit cards and the extent of unsupported payments.

Table 2: Credit Card Expenses and Unsupported Payments

	2009/10	2010/11	Totals
All payments*	$ 138,138	$ 170,118	$ 308,256
Unsupported payments	11,434	19,756	31,190
Percentage unsupported	8.3%	11.6%	10.1%

*Source: Agency financial records

The criteria we used to assess that a payment was not adequately supported were as follows:

- Payments were made on the basis of a credit card statement posting only
- Payments were made on the basis of a receipt or register tape only, with no explanation documented for the purpose of the expenditure
- Payments were made where the supporting documentation was lacking in sufficient detail to assess the appropriateness or purpose of the expense
- Payments were made on the basis of a requisition or memo only.

Other concerns noted, from our audit of credit card charges, include the following:

- There were expenditures for management meetings where in most cases meals were purchased (2009/10 - $3,885; 2010/11 - $5,078). For many of these payments (2009/10 – 38.9%; 2010/11 – 33.5%), there was inadequate support regarding the purpose of the meetings and/or the individuals attending
- On occasion, luncheons were brought in and provided to all staff where there was no purpose documented. We could not quantify the extent of these expenditures due to the lack of supporting detail.

The Agency does not have a policy regarding the use of credit cards, including what types of expenses are allowed and not allowed.

Recommendation 12: We recommend that the Agency implement an overall spending policy which provides direction to staff as to the types of expenses that are allowed and not allowed.

Recommendation 13: We recommend that the Agency implement a policy requiring all senior management expenses be appropriately reviewed and approved.

Recommendation 14: We recommend that the Agency require that all transactions have adequate support and that the purpose of the expense is documented.

3.3 Board member compensation and expenses

3.3.1 Board decisions on reimbursement of expenses are not formalized in a policy

The Board approves various expenses from time to time and documents their decisions in board minutes. These decisions are not brought forward to form a formal centralized policy for reimbursement.

A policy for Board compensation and expenses is an important tool in the management of agency funds. Areas that the policy should cover include (but are not limited to):

- Per diems
  - state the per diem rate
  - whether the per diem will only be paid for meetings or whether it can include payment for work performed on Agency matters
- Travel costs
  - state the cost per km rate
  - the circumstances under which travel costs will be reimbursed
- Meals
  - per diem vs actual expense billing
  - if based on per diem, state the per diem rate
- Other
  - details about the nature of the claim (date of board meeting or other business)
  - the date the policy was set
  - when the policy will be reviewed in the future
  - process for submitting claims (requirements, supporting documents, deadlines)

From our audit of Board member expenses we determined that per diem rates approved by the Board were used consistently.

> **Recommendation 15:** We recommend that a policy for Board compensation and expenses be developed.

3.4 Employee advances

3.4.1 The Agency does not have a formal policy regarding advances to employees

The Agency has had a practice of providing loans to employees in the form of payroll/salary advances. Employees made formal written requests for an advance and they usually included a proposed schedule of repayment. Approval was given by a supervisor and final approval was granted by the Executive Director. Repayments were made by deduction from subsequent regular salary payments through the payroll service.

Table 3 summarizes advances to employees for 2009/10 and 2010/11. Four (4) employees were responsible for a large percent of the total advances (2009/10 – 84.2%; 2010/11 - 67.2%). All requests were approved by a supervisor and then final approval for payment was given by the Executive Director. However, in the review of support for several payments, they did not show final approval by the Executive Director. All payments were by cheque and approved for preparation by the Finance Director. In the case of the 4 employees, all amounts were repaid as of March 31, 2011.

Table 3: Employee Advances

	2009/10	2010/11	Totals
All advances	$ 18,070	$ 19,576	$ 37,646
Accounts receivable from employees	1,554	3,090	

Source: Agency financial records and 2009/10 audited financial statements; 2010/11 Agency Draft financial statements

In the Board minutes of August 26, 2009, there was some discussion on the high number of advances being made to staff, that there was no policy covering advances, and that the Executive Director had to determine approval. The Executive Director was to discuss the matter with management and minimize the practice.

In addition, a package of supporting documentation for the Board meeting of September 23, 2009 included an email from the Executive Director to management, regarding the increase in advances, that effective immediately all requests were to be presented to the Executive Director for close review.

In meetings with senior management we were told there has been an attempt to reduce the number and amount of employee advances. However, there has been no policy formalized to date.

Recommendation 16: We recommend that the Agency implement a policy for employee advances which addresses whether employee advances will be allowed and if so, under what conditions.

4. Foster home licenses/Place of safety

While our original objectives did not include the examination of foster home licenses and places of safety, concerns came to our attention and we extended our work in those areas.

4.1 Foster home licenses

4.1.1 Foster homes were not consistently reviewed and re-licensed annually

CFSIS information, concerning foster home licenses and children in care, was not accurate

Foster home visits were not being conducted in accordance with Agency standards or were not documented as being done in the foster home file

According to *The Child and Family Services Act* (CFS Act) a person is not allowed to operate a foster home without a licence. Under the CFS Act, Manitoba Regulation 18/99, the *Foster Homes Licensing Regulation* (Regulation) was passed to regulate the licensing and operations of foster homes in Manitoba.

Some relevant sections of the Regulation include:

- Section 3(1) states that a person may apply to the licensing agency for a licence to operate a foster home (the Agency is a licensing agency)
- Section 3(2) sets out what information is to be included with an application such as a criminal record check and a child abuse registry check for the applicant, consent for a prior contact check for the applicant, and references for the applicant
- Section 3(4) requires a home inspection be conducted for each licence application
- Section 3(5) indicates a licence is valid for a one-year period
- Section 3(6) sets out the form of the licence and that each licence should state the address of the foster home, the date the licence expires, and designate the number and gender of the children who may be placed in the foster home
- Section 13(1) requires the licensing agency to conduct a foster home review, prior to the expiry of the licence, to determine if the licence should be renewed.

The Child and Family Services Information System (CFSIS) was developed by the Department as a case management system to be used by agencies for case recording, and for managing the provision of services to children and their families (including foster home placements), and as such, to provide the Director of Child and Family Services with province-wide information on child and family service cases. Concerning foster homes, updating CFSIS in a timely manner is important to ensure that an accurate inventory of foster homes and space availability exists province-wide.

The Agency provided us with a detailed listing of its licensed foster homes as at July 21, 2011 from their CFSIS database. We examined the listing to determine if licenses were current and on a sample basis agreed the information on the listing to the foster home files and determined if the required checks had been completed. Our sample size of 10 foster home files was determined based on 15% of the 62 files on the listing.

The following observations were noted from our tests:

- 35.5% (22 of 62) of the foster home licenses on the listing were expired
- For 3 of the 10 files examined the licence expiry date on the listing did not agree to the latest licence in the foster home file
- For 5 of the 10 files examined the number of children in care on the listing did not agree with the number of children in care on the latest licence in the foster home file
- For 5 of the 10 files examined foster home visits by the foster care social worker were not current according to the documentation included in the file. According to Agency staff these visits are to be done quarterly and documented in the file. This is consistent with monitoring standards included in the *Child and Family Services Standards Manual*
- For all of the 10 files examined the name and address on the listing agreed to the licence, there was evidence of a home inspection performed before the initial foster home licence was issued, and criminal record checks, child abuse registry checks and references were on file
- For all of the 10 files examined there was evidence of a foster home review for the latest licence on file, although as noted many of the licenses on the listing were not current.

When we asked Agency staff why the foster home licenses and foster home visits were not current they stated that staff shortages were the cause.

> **Recommendation 17:** We recommend that the Agency schedule and conduct licensed foster home reviews prior to licence expiry dates.

Recommendation 18: We recommend that the Agency update CFSIS on a timely basis.

Recommendation 19: We recommend that the Agency conduct and document quarterly foster home visits consistent with Department standards.

4.2 Place of safety (POS)

4.2.1 POS home assessment reports were not consistently conducted within 6 months of the placement date

POS visits were not being conducted in accordance with Agency standards or were not documented as being done in the POS file

The CFS Act defines a POS as any place used for the emergency temporary care and protection of a child and includes treatment centres. Similar to the licensing requirements for a foster home, prior to the placement of a child in a POS, a criminal records check, a child abuse registry check, and a prior contact check must be done for everyone in the home that is over 18 years of age. The Placing Social Worker completes a reference form after a reference check has been done for the person who will be providing care. A physical requirements checklist is also completed based on an inspection of the residence.

According to the *Child and Family Services Standards Manual* – Standard 12 in Section 1.5.2, when an agency places a child in a family residence that is not licensed as a foster home, the placement cannot exceed 1 month unless the individual or couple applies for a foster home licence. If an application for a foster home licence is to be made, the worker provides the individual or couple a foster home licensing application form to complete and return within 1 month from the date the child was placed in the home. The worker must then complete an assessment of the foster home within 6 months from the placement date. If the individual or couple decides not to proceed or the home is not approved for licensing, a plan must be made to remove the child.

The Agency provided us with a detailed listing of its POSs as at July 21, 2011 from their CFSIS database. We examined the listing to determine if a home assessment had been made within 6 months of the placement date and on a sample basis agreed the information on the listing to the POS files and determined if the required checks had been completed. Our sample size of 5 POS files was determined based on 15% of the 27 files on the listing.

The following observations were noted from our tests:

- 40.7% (11 of 27) of the POS files on the listing did not have a home assessment report on file within 6 months of the placement date
- For 4 of the 5 files examined, POS visits by the foster care social worker were not current according to the documentation included in the file. According to Agency staff these visits are to be done quarterly and documented in the file. This is consistent with monitoring standards included in the *Child and Family Services Standards Manual*
- For all of the 5 files examined, the details on the listing agreed to the POS files and all the required checks had been completed and were on file.

When we asked Agency staff why the home assessment reports and POS visits were not current they stated that staff shortages were the cause.

> **Recommendation 20:** We recommend that the Agency schedule and conduct POS home assessment reports within 6 months of the placement date consistent with Department standards.

> **Recommendation 21:** We recommend that the Agency conduct and document quarterly POS visits consistent with Department standards.

5. Thunderbird Nest Children and Family Centre

In January 2008, the Agency entered into a lease agreement for a facility commonly known as Pedro Lake Lodge. The lodge is located approximately 2.5 hours from Winnipeg at Pedro Lake, Manitoba. The initial lease period is 5 years, commencing on January 1, 2008 to December 31, 2012. The lease may be renewed by the Agency for another 5 year period. The Agency is responsible for insurance, utilities, maintenance, and leasehold improvements. The Agency, at its own expense, may make major renovations to the premises, with the agreement of the landlord. The current monthly rent is $2,200 plus GST.

The facility currently has 3 self contained units within the lodge. Entire families, including the parent(s), enter the Agency's Family Preservation Program (Program) at Thunderbird Nest. According to the Agency's 2009/10 Annual Report, the Program is to provide a life skills program which is supervised and supported by a qualified foster parent, support staff and mentors. Families entering the Program are normally families who have children in care and are at risk of them becoming more permanent if there is no intervention. The goal of the Program is to have the family remain in the Program for 1 year and then transitioned back into the city with many supports put in place that slowly diminish over the course of the year. Once the family is stable then the file is closed.

Our audit did not include a comprehensive review of the Program's operations. However, from our limited review of the Program, we did note some concerns which are discussed below.

5.1 No business plan for the program

Agency staff advised us that a Business Plan had not been prepared for the Program but that they are working on it. From our review of Board minutes from 2007 we did not see any documented discussion on the anticipated costs of the Program. At the February 20, 2009 Board meeting, it was noted that a cost benefit analysis needs to be completed for the Program. Agency staff advised us this analysis has not yet been prepared.

According to Agency records, since February 2008, it has spent approximately $159,000 on renovations to the facility. Another $27,000 has been spent by the Agency on furniture and equipment for the facility. These costs, plus the monthly rental payment of $2,200, were included in the per diem rate calculation for the children in care at the Program and were recovered from the Department through child maintenance billings. For example, the billing for the period May 1 to May 15, 2009, for the 11 children in care at the Program amounted to $13,729 which, in addition to other charges for special needs and respite workers incurred on behalf of the children, was billed to the Department.

A detailed business plan for a program of this size should have been prepared and discussed with the Board prior to the start of the Program.

5.2 The facility may not be properly licensed

Currently, the facility is licensed as a foster home. A separate foster home licence is issued for each of the 3 foster parents in the Program.

Some relevant sections of the *Foster Home Licensing Regulation* (Regulation) and our comments on each section are summarized below.

Section 2(a) states that the Regulation applies to a foster home where residential care and supervision of children is provided on a continuous basis by 1 or 2 persons who are not the parents of the children, in the home where those persons ordinarily reside. The foster parents of the Program do not reside in the facility. Further, Section 1.5.2 of the *Child and Family Services Standards Manual* provides an interpretation of "ordinarily reside" as follows – consistent with the intent of the regulation; a home should not be licensed unless a foster parent resides in the home for a minimum of 5 24-hour days per week. According to Agency staff, the foster parents of the Program are not consistently staying in the facility overnight.

Section 6(1) states that a licensing agency shall only issue 1 licence for 1 residential address. Also, Section 7(1) states that a foster home may be licensed to provide care for not more than 4 children. Although the facility has 3 self contained units within the lodge we are not sure whether the intent of the Regulation has been followed.

Agency staff told us they had not obtained legal advice regarding the licensing of the facility. Since the Agency is a licensing agency in relation to foster homes it issued the licenses for the facility. If the facility was licensed as a child care facility it would fall under Manitoba Regulation 17/99. Child care facility licenses are issued by the Director of Child and Family Services and each application for a license must include a written proposal outlining the program and goals of the facility, the residents to be served and the services to be provided, documentation on the need for the facility and a description of the client population to be served. Documentation must also be provided as to the qualifications and training of the applicant. The information required for a child care facility license is much more comprehensive than the information required for a foster home license.

5.3 No performance measures for the program

We were told by Agency staff there were no performance measures in place to assess whether the goals of the Program were being achieved. From our review of Board minutes we did not see any documented discussion of the Program's performance. Although, as mentioned above, it was discussed at a Board meeting that a cost benefit analysis needs to be done for the Program no such analysis has been completed to date.

The stated goal of the Program is to provide a life skills program which is supervised and supported by a qualified foster parent, support staff and mentors. Agency staff told us the qualifications for foster parents of the Program were the same as for all its other foster parents such as being able to provide care for children and provide references. The life skills training is provided by Agency staff.

It is important that the Agency develop performance measures and targets to evaluate the success of the Program and to report this information to the Board.

> **Recommendation 22:** We recommend that the Agency confirm with Department officials that the facility is properly licensed.
>
> **Recommendation 23:** We recommend that the Agency develop performance measures, including outcomes and targets, on which Program performance could be assessed.

6. Compliance with funding agreement

The Authority provides funding to the Agency through a Funding Agreement (Agreement) which outlines the terms and conditions under which the funding is provided. In conducting this section of the audit we examined the 2010/11 Agreement to determine if the Agency was complying with what we considered to be the key terms and conditions of the Agreement.

6.1 The Agency was in compliance with some key terms and conditions of the agreement, but not all

Based on our audit we determined that the Agency was forwarding the following information to the Authority:

- Annual operating budgets
- Audited financial statements and management letters
- Compensation disclosure statements
- Annual Reports.

The Agency does not forward interim financial statements to the Authority and has not developed a conflict of interest policy.

Section III of the Agency Reporting Requirements, which is an attachment to the Agreement, states that agencies shall submit interim financial statements for the periods ending June 30, August 31, and December 31 to the Authority. Agency staff told us they were not forwarding interim financial statements to the Authority.

Section 2.11.1 of the Agreement requires agencies to develop a conflict of interest policy which defines what constitutes a conflict of interest for its directors, officers and employees and that the policy, at a minimum, should meet or exceed the Province's Conflict of Interest Policy.

The Agency does have a draft conflict of interest policy dated August 2007. However, according to Agency staff the Board has not reviewed or approved the policy yet. Based on our review of the draft conflict of interest policy we determined that it did not meet or exceed the Province's Conflict of Interest Policy, as required by the Agreement.

During our audit we noted 3 occasions where a senior staff member may have been in a conflict of interest position. We will be discussing these matters with the Agency's Board and officials of the Southern Authority.

Recommendation 24: We recommend that the Agency forward interim financial statements to the Authority.

Recommendation 25: We recommend that the Agency develop a conflict of interest policy for its Board members and staff which meet the standards of the Province's Conflict of Interest Policy.

Summary of recommendations

Operating deficits/funding

1. We recommend that the Agency finalize the repayment schedule for the CSA funds owing to the Province.

2. We recommend that the Authority provide the Agency with a detailed breakdown of its operating funding.

3. We recommend that the Authority, in collaboration with the Agency, review the impact of the new funding model assumptions on the Agency and ensure that the funding inequities have been resolved.

Governance

4. We recommend that the Board review in detail and approve the Agency's annual operating budget on a timely basis.

5. We recommend that the Board meet with the external Auditors at the beginning of the audit to discuss the Audit Plan and at the end of the audit to discuss audit results and any management letter recommendations.

6. We recommend that the Board review and approve the Executive Director's expenses, and any other benefits paid to or on behalf of the Executive Director.

7. We recommend that the Agency develop a plan to recruit Board members with financial expertise.

8. We recommend that the Board track actions that need to be completed. These items should be documented in subsequent Meeting minutes until the required action has been completed or the Board approves that the matter should be removed.

Expenditures

9. We recommend that bank reconciliations be prepared in a timely manner, and that they should be dated.

10. We recommend that bank reconciliations be checked and approved by an individual other than the preparer.

11. We recommend that the delegation of authority for cheque signing be created such that there are enough individuals to sign cheques so that the payee does not sign his/her own cheque.

12. We recommend that the Agency implement an overall spending policy which provides direction to staff as to the types of expenses that are allowed and not allowed.

13. We recommend that the Agency implement a policy requiring all senior management expenses be appropriately reviewed and approved.

14. We recommend that the Agency require that all transactions have adequate support and that the purpose of the expense is documented.

15. We recommend that a policy for Board compensation and expenses be developed.

16. We recommend that the Agency implement a policy for employee advances which addresses whether employee advances will be allowed and if so, under what conditions.

Foster home licences/Place of safety

17. We recommend that the Agency schedule and conduct licensed foster home reviews prior to license expiry dates.

18. We recommend that the Agency update CFSIS on a timely basis.

19. We recommend that the Agency conduct and document quarterly foster home visits consistent with Department standards.

20. We recommend that the Agency schedule and conduct POS home assessment reports within 6 months of the placement date consistent with Department standards.

21. We recommend that the Agency conduct and document quarterly POS visits consistent with Department standards.

Thunderbird Nest Children and Family Centre

22. We recommend that the Agency confirm with Department officials that the facility is properly licensed.

23. We recommend that the Agency develop performance measures, including outcomes and targets, on which Program performance could be assessed.

Compliance with funding agreement

24. We recommend that the Agency forward interim financial statements to the Authority.

25. We recommend that the Agency develop a conflict of interest policy for its Board members and staff which meet the standards of the Province's Conflict of Interest Policy.

Response of officials

Animikii Ozoson Child and Family Services

We are in agreement with the recommendations outlined in the report and will address them within our new policies that are under development. New policies include Governance as well as all areas of operations. We also anticipate greater financial stability once the new funding formula takes affect providing it takes into account current case numbers and specialized service areas.

First Nations of Southern Manitoba Child and Family Services Authority (Southern Authority)

Agency Operating Deficits/Funding

The Agency had received all the details from the Winnipeg Resource Transfer Table (RTT) that provided a detailed breakdown of all staffing received with the transfers. Additions to funding from the original transfer was $68,500 for Executive Core and $367,500 for additional social workers noted as workload relief both starting in 2007-08 and provided annually with applicable cost of living adjustments. The Agency will now be funded under the new funding model which provides a detailed breakdown for all positions and amounts.

The new model review with the Agency is planned for quarterly meetings to report on progress and any issues with implementation.

Financial Systems at the Animikii Ozoson CFS

The Southern Authority has been concerned about the financial systems at the Agency. These include the following:

- The Board and the Executive Director rely heavily on the Finance Director for information. Given the manual systems used at the Agency, the Board and Executive Director, in our opinion, are not able to get timely and accurate information. For example, the production of financial statements on at least a quarterly basis was not occurring.
- Internal controls and segregation of duties are not adequate.
- The Southern Authority had earlier discussed with the Agency the use of credit cards and advances, and requested better controls be implemented.

As a result of these concerns, the Southern Authority began discussions with Price Waterhouse Cooper (PWC) in the summer of 2011, with a view to engaging them to complete an assessment of the Agency's financial systems. A letter of engagement was signed with PWC on October 14/2011 outlining the requirements of PWC to assess existing capacity, identify gaps in best practice, and provide recommendations on how to implement best practices, including internal controls, segregation of duties, credit card usage, and conflict of interest policy. PWC is nearing the completion of the assessment and is completing policy manuals and recommendations. PWC will assist in the implementation process.

Steps have also been taken to train staff to use ACCPAC and to convert the Agency's manual systems to ACCPAC.

Funding Review, Accumulated Deficit, and CSA Recoveries

The implementation of the new funding model provides Animikii Ozoson with increased funding levels and will relieve the immediate funding pressures for the Agency. It will also assist the Agency in resolving its accumulated deficit.

Animikii Ozoson has not yet received any new funds under this funding model as the completion and review of its Business Plan remains in progress. As the Southern Authority worked with the Agency to complete the Agency's five year business plan, there was increasing concern about the reliability of the financial data the Agency was using, both for operations and for maintenance. This includes determining if the Agency was in a position to repay the $3.4M to the Province of Manitoba. This is currently still being assessed and negotiated.

Board Governance

The Southern Authority will be meeting with the Animikii Ozoson CFS Board and Executive Director to follow up on the action plan required as a result of the review recommendations. The Southern Authority contracts with a governance coach and the plan will include the governance coach being assigned to assist the Agency Board in strengthening its governance practices. This, combined with the work being done by the PWC, will build capacity at the Board level.

Foster home licensing and Places of Safety and Contact

The Agency provided a listing of the status of its foster home licenses and places of safety as of March 31/2011 to the Southern Authority. The Quality Assurance review being undertaken at the Agency by the Southern Authority will examine the foster home files and licenses, as well as the places of safety. This will be prioritized.

The capacity of CFSIS to track foster homes has had limitations, and over the past year, changes have been made by the Province to improve this. The Southern Authority has been in discussion with its agencies about the use of the Foster Care Management (FCM) module in CFSIS and challenges that they face in using this, including connectivity. The plan includes sending a written directive to agencies in December 2011 requiring agencies to use the FCM for all foster homes effective January 2/2012, as connectivity permits. Animikii Ozoson does not have a connectivity issue and so should be in full compliance with this directive.

The Province provides data on a monthly basis on agency compliance with the face to face visits with children in care. This data is taken from CFSIS and is provided to agencies. Agencies are expected to follow up on late visits. In our reviews with agencies, it appears that there is often a lag between the contact and the worker's entry of this on CFSIS. This will be examined more fully in the quality assurance review.

It should be noted that the new funding model for the Province does not include funds for staffing Alternate Care/Foster Home departments. This contributes to the ongoing issues of late renewals, outstanding licenses, and expired places of safety. The provision of Out of home care is a critical function of a CFS Agency and should be properly resourced.

Thunderbird Nest

The Southern Authority will follow up with the CFS Division to ensure the proper licensing for the Thunderbird Nest and to resolve funding/approval issues. It should be noted that maintenance billings (which would include Thunderbird Nest) go directly from the Agency to the CFS Division at the Province, and are reimbursed directly by the Division to the Agency.

Chapter 4

Food Safety

Department of Agriculture, Food and Rural Initiatives

Department of Health

Executive management
Carol Bellringer
Sandra Cohen

Principals
Melissa Emslie
Phil Torchia

Auditor
Tiffany Beyer

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Main points

What we examined

In Manitoba, regulatory responsibility for food safety is shared by the Province, the City of Winnipeg, and the Federal Government. The Province regulates food produced, processed, stored, and sold in Manitoba by establishments that are not otherwise regulated by a municipality or the Federal Government. This includes establishments that slaughter animals, process and store food, and retail and food service establishments, such as grocery stores and restaurants.

Provincial responsibility is divided between the Department of Agriculture, Food and Rural Initiatives (MAFRI) and the Department of Health (Health). In general, MAFRI is responsible for the safety of food before it is available to consumers, while Health is responsible once it is directly available to consumers.

We examined the Province's food safety system, including systems and practices for strategic planning and performance measurement, developing and enforcing food safety standards, providing food safety education, and promoting food safety programs.

Why it matters

Food safety has important health implications. According to the Canadian Food Inspection Agency (CFIA), public health experts have estimated that over 11 million cases of food-borne illness occur in Canada annually, although most cases of food-borne illness can be prevented by using safe food handling practices.

Food safety also has important economic implications. In addition to the lost productivity and medical costs of food-borne illnesses, significant economic consequences may result from any deterioration in the Province's and Canada's reputations for safe food.

As food safety risks and methods of responding to those risks have evolved, Manitoba has taken steps towards ensuring adequate oversight of its food safety responsibilities. Because the food safety system is complex and entails various risks, we undertook this audit to determine if the Province was well positioned to manage its food safety system.

What we found

MAFRI and Health had many systems and practices in place to identify and mitigate food safety risks. Nevertheless, we identified areas where planning and performance measurement, enforcement processes, and promotion of preventive food safety activities and programs require improvement to better ensure food safety. Our key findings are summarized below.

Planning and performance measurement

- The Province's strategic planning for food safety was evolving. MAFRI and Health need to work together to integrate their separate plans, to more fully address risks, and to ensure their plans reflect an appropriate mix of preventive and detective measures.
- Both departments had set some performance targets. However, both need to add indicators of effectiveness and to analyze results compared to targets. Both also need to enhance publicly available performance information.

Enforcing compliance with food safety standards

- The Province's food safety standards were generally consistent with those in other jurisdictions, except the Province did not have mandatory food handler training.
- A common food establishment database put in place in July 2009 was used by most inspectors, but this database was not always up to date.
- Neither department had implemented a risk-based approach to determine the priority and frequency of inspections, nor were they able to meet their informal goal of annually inspecting every food establishment.
- Routine dairy inspections had been halted, contrary to an existing regulation, in order to re-assign resources to inspecting food processing establishments.
- Food safety complaints were handled adequately in most cases.
- Inspectors did not always follow up food safety violations, including critical violations, to ensure they were corrected.
- Escalating enforcement options were in place (warnings, fines, health hazard orders, closure, and prosecution), but enforcement actions were not always escalated for repeated serious violations.

- Some initial permits were issued to food establishments before all related requirements were met. Annual permits were automatically renewed, without first reviewing a food establishment's history.
- All inspectors had related training and experience. A conflict-of-interest policy and related processes were in place to ensure inspector independence, but these processes require enhancement to ensure potential conflicts are assessed annually and dealt with appropriately.
- MAFRI and Health relied on informal policies and procedures to guide inspectors and ensure consistent inspection work, although Health was drafting formal policies. Neither department conducted quality assurance reviews of inspection files.

Promoting preventive food safety activities and programs

- MAFRI and Health provided a variety of educational material on food safety for food establishments and consumers. However, educational material and activities could be better linked to trends in critical food safety violations found during inspections. And the focus on consumer safety awareness could be increased and better integrated between the 2 departments.
- MAFRI promoted the use of preventive food safety programs by providing information and financial assistance to producers and food processors. Health did not similarly provide information on food safety programs to retail and food service establishments.
- MAFRI approved some applications for financial assistance to implement food safety programs before all eligibility criteria were met, but it always verified program implementation and costs before disbursing funds. Documentation of eligibility reviews and verification work could be enhanced.

Background

Food safety awareness

Public awareness of food safety issues has increased following several recent outbreaks of food-borne illness, including listeriosis in ready-to-eat meats, salmonella in spinach, and melamine-tainted baby formula. Food contamination can result from chemical or biological substances in animal feed, misuse of veterinary drugs, poor farming or processing practices, and improper handling of food in stores, restaurants or homes. There are many possible sources of food contamination since it can occur at several different points in the food supply chain.

Food safety implications

Food safety has important health implications. According to the Canadian Food Inspection Agency (CFIA), public health experts estimate over 11 million cases of food-borne illness occur in Canada annually. Symptoms range from stomach cramps and nausea to more extreme outcomes, including, in some rare cases, death. CFIA reports most food-borne illness can be prevented by using safe food handling practices (such as washing hands and surfaces often, refrigerating food promptly, avoiding cross-contamination, and using a thermometer to ensure food is cooked to a safe internal temperature).

According to Health officials, there were 343 human cases of food-borne illness reported to Manitoba Health in 2009. Of these, 211 were likely from food exposure in Manitoba, 74 were likely related to travel outside of Manitoba, and 58 were likely associated with water. For most, a definitive link to the source of the exposure was not established, although 3 cases were linked to food-borne illness outbreaks. An outbreak of illness occurs when a group of people consume the same contaminated food and 2 or more suffer the same illness. No deaths related to food-borne illness were identified.

Food-borne illnesses are generally under-reported as many people with symptoms do not visit a health care provider or provide specimens for laboratory testing. In addition, it can be difficult to definitively identify the source of a confirmed food-borne illness. Many people have had a food-borne illness at one time or another, although they may not have recognized it.

Food safety also has important economic implications. In addition to the lost productivity and medical costs of food-borne illnesses, significant economic consequences may result from any deterioration in the Province's and Canada's reputations for safe food.

Shared food safety responsibilities

In Canada, food safety responsibility is shared between the various levels of government, industry, and consumers. Governments develop and enforce standards and promote food safety, but industry and consumers also have roles to play by being aware of food safety issues and organizing their own activities to minimize food safety risks.

Federal responsibilities

The Federal Government regulates federally registered establishments, generally those that ship food inter-provincially or internationally, and imported food. It also takes the lead in responding to multi-jurisdictional food-borne illness outbreaks. Several different federal departments and agencies are involved in food safety:

- Health Canada sets food safety policies and standards in Canada
- CFIA enforces the food safety policies and standards set by Health Canada
- The Public Health Agency of Canada conducts food-borne illness outbreak surveillance and studies the causes, distribution, and control of food-borne illness
- Agriculture and Agri-Food Canada provides information, research and technology, and policies and programs to achieve security of the food system.

The Public Health Agency of Canada also administers the Federal Food-Borne Illness Outbreak Response Protocol, which sets out federal and provincial responsibilities for multi-jurisdictional food-borne illness outbreaks. In 2010, in consultation with provincial and territorial stakeholders, the Protocol was jointly updated by the Public Health Agency, Health Canada, and CFIA. Both MAFRI and Health participated in this process.

Provincial responsibilities

The Province regulates food produced, processed, stored, and sold in Manitoba by establishments that are not otherwise regulated by a municipality or the Federal Government. This includes establishments that slaughter animals, process and store food, and retail and food service establishments, such as grocery stores and restaurants. The City of Winnipeg is the sole municipality in the Province with food safety regulatory authority, which it exercises only within the City of Winnipeg boundaries that existed before the 1972 amalgamation of suburbs.

MAFRI responsibilities

MAFRI is responsible for the safety of food before it is available to consumers. This includes food safety on farms and in slaughterhouses, food processing plants, meat processing plants, dairy processing plants, and warehouses.

MAFRI assumed food safety oversight responsibility for 28 provincially registered slaughterhouses in April 2007, and about 500 food processing establishments and warehouses under provincial responsibility in June 2009. Prior to these dates, Health was responsible. MAFRI also has food safety oversight responsibility for about 400 dairy farms and 2 provincially registered dairy processing plants.

MAFRI has 4 food safety inspectors: 2 in Brandon, 1 in Dauphin and 1 in Winnipeg. The inspectors conduct and follow-up inspections, issue permits, handle complaints, and provide food safety education as part of their inspection process. They also periodically assist with other matters, such as animal welfare complaints and elk farm inspections.

Inspection of provincially registered slaughterhouses is outsourced to CFIA. However, CFIA's responsibility ends once the slaughter is completed; oversight over any further processing, such as cutting and wrapping, is MAFRI's responsibility.

MAFRI also has 10 staff providing consultation services and promotional activities designed to encourage producers, processors and distributors to adopt food safety programs, such as Good Agricultural Practices (GAPs), Good Manufacturing Practices (GMPs); and Hazard Analysis Critical Control Points (HACCP). They also administer financial assistance programs to help producers and processors implement food safety programs.

Health responsibilities

Health is responsible for the safety of food once it is directly available to consumers. This includes food safety in restaurants, retail food stores, temporary food establishments, and mobile food units.

In April 2007, Health assumed food safety oversight responsibility for about 7,000 food handling establishments under provincial responsibility, as well as 500 food processing and warehouse establishments subsequently transferred to MAFRI in June 2009. Prior to this date, the Department of Conservation was responsible.

Health has 24 public health inspectors that conduct and follow-up inspections, issue permits, handle complaints, and provide food safety education as part of the inspection process. In addition to inspecting food handling establishments, they also inspect rental housing, daycares, pools, and recreational camps. About 40% of an inspector's time is spent on food safety activities.

Health also maintains food safety surveillance data and administers Manitoba's Enteric Illness Protocol, which sets out provincial roles and responsibilities for food-borne illness outbreaks in the Province. The Protocol provides guidance and procedures for containing an outbreak and preventing its spread, determining an outbreak's source, and the reporting required during an outbreak investigation.

If an outbreak is specific to 1 region, the local regional health authority leads the investigation. If the outbreak affects multiple regions, Health takes the lead. MAFRI assists as required, but it does not have a defined role under the Protocol. Health officials told us they planned to update the Protocol (last updated in 2008) soon to ensure it is consistent with the recently updated Food-Borne Illness Outbreak Response Protocol administered by the Public Health Agency of Canada.

City of Winnipeg responsibilities

The City of Winnipeg is responsible for about 2,100 food establishments within the City boundaries that existed before the amalgamation of the suburbs in 1972. The City has 13 inspectors that conduct inspections of food establishments, as well as swimming pools, body modification establishments, residential care facilities, and day cares. About 90% of an inspector's time is spent on food safety activities.

Provincial regulatory authority

Provincial regulatory authority primarily stems from *The Public Health Act*, *The Dairy Act*, and related regulations.

The Public Health Act provides authority for both MAFRI and Health to conduct inspections and enforce standards. *The Food and Food Handing Establishments Regulation*, a regulation under this Act, defines the different types of food handling establishments, sets out their registration and permitting requirements, and specifies the food safety standards they are required to follow. Food handling establishments include:

- Slaughterhouses (such as for beef, hogs and poultry)
- Food processing plants (such as pasta makers)
- Meat processing plants (such as beef cut and wrap facilities)
- Warehouses
- Food service establishments (such as restaurants)
- Retail food stores (such as grocery stores)
- Temporary food service establishments (such as festival vendors)
- Mobile food service establishments (such as hotdog carts).

The Dairy Act requires dairy farms and dairy processors to be registered, and provides the authority for inspectors to conduct inspections and enforce standards. *The Dairy Regulation*, a regulation under this Act, specifies the food safety standards that dairy farms and dairy processors are required to follow.

MAFRI has tabled a *Food Safety Act*, but at the time of our audit it was not yet in force and related regulations were still being developed. Once it is in force, MAFRI will operate under this Act as opposed to *The Public Health Act*, and *The Dairy Act* will be repealed. MAFRI officials expect *The Food Safety Act* and regulations to be fully implemented in the next 2 years.

Federal-Provincial communication and coordination

MAFRI and Health both participate on the Federal, Provincial and Territorial (FPT) Food Safety Committee. This Committee:

- Coordinates the development of national food safety policy options
- Engages interested and affected partners and stakeholders to ensure practical and realistic approaches
- Implements initiatives to achieve national food safety goals and priorities
- Supports FPT Assistant Deputy Ministers of Agriculture and Health with food safety responsibilities.

MAFRI also participates in various working groups under the FPT Food Safety Committee, such as:

- The Pathogen Reduction Working Group, which focuses on lowering pathogen related risks in meat and poultry
- The Enhanced Surveillance Working Group, which focuses on improving data collection
- The Common National Meat Hygiene Standard Working Group, which was pilot testing draft standards at the time of our audit.

Health also participates in the FPT Public Health Network Committee and the FPT Council of Chief Medical Officers of Health. These Committees provide advice and direction on risk assessment and communication, as well as the management of food related human disease outbreaks.

Audit approach

Audit objectives

We examined the adequacy of the systems and practices in MAFRI and Health for:

- Food safety strategic planning and performance management
- Enforcement of food safety standards
- Food safety education and promotion of food safety programs.

Audit scope

We conducted the audit between September 2009 and July 2010. It examined food safety processes in place between January 1, 2009 and December 31, 2009 at MAFRI and Health. Our audit was performed in accordance with the value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

The audit included review and analysis of applicable legislation, policies and practices, files, records, reports, correspondence, and other program documentation. As well, we interviewed people from the departments, as well as various stakeholders and subject matter experts. We also accompanied department staff on inspections of food establishments. Lastly, we obtained information on food safety standards and inspections from other provinces.

Audit findings and recommendations

1. Planning and performance measurement

1.1 Food safety strategic planning

1.1.1 Strategic planning underway requires enhancement

We expected MAFRI and Health would work together to develop a comprehensive food safety strategic plan for Manitoba and that strategic planning would include:

- Processes to identify, assess and prioritize food safety risks
- A mix of activities to manage food safety risks, including programs to both prevent and detect food-borne illness hazards
- Alignment of resources and funding with food safety goals.

At the time of our audit, MAFRI had hired a consultant to help them develop a risk-based food safety strategic plan. The consultant identified several weaknesses and risks, including:

- The limited number of MAFRI inspectors (only 4) for the 500 facilities requiring inspection
- The distance between inspectors and facilities, resulting in excessive travel time and costs
- The lack of a system for risk-rating facilities (risk-rating would consider factors such as the type of product produced and the production process, the measures in place to reduce or eliminate risk, and production volume and distribution)
- The lack of a provincial food safety surveillance program supported by laboratory testing
- The need to consult with industry in developing the new *Food Safety Act* regulations and in promoting food safety programs
- The lack of a back-up service delivery plan and transition strategy if MAFRI's agreement with CFIA for inspection services at the 28 provincially registered meat slaughterhouses was to end.

MAFRI produced an annual 3 year plan, setting out objectives, actions required, expected results, and timelines. The 2009/10 plan had a mix of both preventive and detective food safety activities. These included promoting the adoption of food safety programs to farms and industry, as well as conducting inspections. This plan preceded the work of the consultant. MAFRI advised that future plans would deal with the consultant's findings.

Health considered food safety strategic planning as just 1 sub-component of its strategic planning for public health. It had not formally identified risks specifically related to food safety or created a written strategic plan. Most food safety planning centred on ensuring compliance with food safety standards by inspecting establishments, with education part of this process. However, Health's concerns about food safety also extended to issues such as the level of transfats and sodium in foods. There were no plans to promote food safety programs (such as HACCP) to restaurants and other food service establishments.

Health's strategic planning periodically considered the problems related to sharing the delivery of public health inspection services in Winnipeg with the City of Winnipeg. These included differing service levels (restaurant inspections in the Province's area were less frequent than in the City's area) and confusion for businesses and the public. However, at the time of our audit, the 2 parties were trying to negotiate a cost-neutral merger solution with a common service level.

MAFRI and Health conducted their strategic planning for food safety separately. At the time of our audit, they were not jointly developing a Provincial food safety strategic plan.

Inspection programs alone can only partially manage food safety concerns. Food safety experts and food safety literature note the increasing importance of surveillance (to help identify food safety risks), industry adoption of food safety programs, and consumer awareness and education. We noted efforts were underway to coordinate and potentially increase surveillance activities, but the 2 departments had not yet decided how this could best be accomplished. Neither department included consumer awareness and education in their strategic planning, although both maintained some consumer information on their websites.

Recommendation 1: We recommend that MAFRI and Health work together to ensure their individual food safety strategic planning is integrated and that it:

- Identifies, assesses and controls risks to food safety
- Considers the appropriate mix of inspections, surveillance, industry and consumer education, and promotion of food safety programs
- Aligns resources and funding with established goals and priorities.

1.2 Performance measurement

1.2.1 Limited performance measurement and public reporting

We expected performance measures, including both expected outputs and outcomes, would be in place for major activities and that management would compare results to targets, explain variances, and consider actions required to improve results. We also expected there would be some publicly available performance reporting.

It is important to have performance measures focused on effectiveness, not just outputs. For example, while it is important to set an annual target for the number of inspections to be performed, it is also important to gather information on the results of inspections, such as the number and types of critical violations.

MAFRI set long-term targets for the number of farms and establishments expected to adopt food safety programs as a result of MAFRI's promotion efforts, but there were no annual targets. MAFRI did not set formal inspection targets. Most food safety performance measures focused on outputs, rather than MAFRI's effectiveness in preventing or reducing food-borne illness. Health did not formally set targets or other measurable performance goals for food safety.

MAFRI compared the number of annual inspections performed to an informal annual target of inspecting each facility once. Management was aware of variances and their causes. However, this was not formally documented. MAFRI also compiled data on food safety program activities, such as the number of participants at outreach activities and the number of funding applications received. Management told us they reviewed this data to monitor progress, but they did not directly compare it to the long-term targets.

Health also informally compared the number of annual inspections performed to an informal annual target of inspecting each facility once. While management was aware of variances, they did not formally investigate their cause or reasons for regional variations in meeting the target. Management found it difficult to measure and report on performance when inspection files were paper-based and kept in regional offices.

MAFRI's 2008/09 annual report, which was publicly available, had a section on MAFRI's food safety activities. This included information on the number of producers in various commodity groups that had adopted food safety programs. But it was unclear what activities MAFRI had taken to contribute to achieving these results. Also, the information was cumulative and did not identify what was achieved in the current year versus prior years. In addition, there was no comparison to the targets set, and no way to judge if the achievements were reasonable. The number of inspections conducted during the year was also reported. In contrast, perhaps partly because of its size and diverse operations, Health did not publicly report on any of its food safety activities.

We reviewed the public reporting on food safety in other Canadian jurisdictions and found examples of the following kinds of information:

- Number of inspections completed
- Number of establishments temporarily closed, fined, or with cancelled permits as a result of inspections performed
- Percentage of establishments complying with standards
- Number of complaints received and responded to
- Number of surveillance and food hazard monitoring initiatives undertaken
- Number of licensed facilities successfully adopting a food safety program
- Percentage of commodity production done under on-farm food safety programs.

In addition, some jurisdictions publicly disclosed targets and compared actual to expected performance.

Several jurisdictions also posted summaries or copies of inspection reports on their websites, allowing the public to search for information about specific facilities. For example, 1 jurisdiction assigned each facility a food safety hazard rating of low, moderate or high after each routine and follow-up inspection. It also disclosed the number of critical and non-critical violations for each inspection and listed a summary description of each violation. Another jurisdiction required all establishments to display the most recent food inspection report on their premises so it could be viewed by customers.

The City of Winnipeg website listed the Winnipeg food service establishments formally charged with violating food safety standards, a summary of the charge, and the resulting fine or reprimand. It also listed establishments ordered closed because of deficient operating conditions, including the closure date, the re-open date, and the reasons for the closure (such as rodent control or sanitation issues). In addition, it listed establishments ordered closed by inspectors for circumstances outside the operators' control, such as flood or fire damage.

The Province gave the City this information for food service establishments in the City that were the Province's responsibility. But the Province did not maintain similar information on its website for the food service establishments outside of Winnipeg. In addition, the public could not search online for inspection results for all food service facilities.

Recommendation 2: We recommend that MAFRI and Health set measurable targets for inspections and food safety programs – including indicators of effectiveness, as well as outputs – and periodically compare results to targets to identify any actions required to respond to trends and improve results.

Recommendation 3: We recommend that MAFRI and Health enhance publicly available information on food safety to include data on compliance with food safety standards.

1.3 Coordinating areas of shared provincial responsibility

We expected food safety roles and responsibilities to be clearly defined and regular on-going communication among the various parties.

1.3.1 Inspection roles and responsibilities clearly defined and communication adequate

A memorandum of understanding between Health and MAFRI detailed the inspection responsibilities of each. MAFRI was responsible for farms, slaughterhouses, food and meat processors and warehouses, while Health was responsible for restaurants, food retail stores, farmers' markets, mobile food units, and temporary food establishments. But many facilities had mixed operations. For example, bakeries may sell to grocery stores and directly to consumers. In these cases, the departments worked together to decide which would be responsible for the facility. There was no written documentation maintained, but the facilities were assigned to the respective department in a shared electronic database.

Health also shared responsibility with the City of Winnipeg for food safety at the consumer level. As the Background section notes, the City was responsible for food service establishments within the City of Winnipeg boundaries that existed before the 1972 amalgamation of suburbs and Health was responsible for all others. There was no documentation formalizing the above arrangement and there were exceptions. For example, City inspectors were responsible for facilities in City-owned buildings that would otherwise be the Province's responsibility and Provincial inspectors were responsible for facilities in Provincially-owned buildings that would otherwise be the City's responsibility.

MAFRI and the City had an informal understanding that MAFRI was responsible for inspecting all food producers and processors in Winnipeg, including those within the old City of Winnipeg boundaries.

All parties communicated as needed. For example, if a Winnipeg food establishment outside of the City's inspection area applied for a Winnipeg business license, the City contacted MAFRI or Health (as applicable) before issuing the license. The City also gave MAFRI and Health complaint information received from the City's 311 phone line (used for non-emergencies and information requests). MAFRI, Health and the City worked together to investigate food-borne illness outbreaks.

All parties showed a common understanding of their inspection responsibilities and described good working relationships. However, better written documentation clearly indicating which party is responsible for facilities with mixed operations and listing the exceptions to established geographical boundaries may prevent gaps and possible duplication in inspections.

> **Recommendation 4:** We recommend that MAFRI and Health, together with the City of Winnipeg, fully document their respective inspection responsibilities, including responsibilities for facilities with mixed operations and exceptions to responsibilities based on established geographical boundaries.

1.3.2 Surveillance roles, responsibilities, and communication evolving

Food safety surveillance is the monitoring and assessment of exposure of a human population to a food contaminant. It can take many forms and be done throughout the food chain. For example, studies can be done on certain foods to determine the prevalence of a certain pathogen, such as salmonella in chicken. Additionally, surveillance can identify actual cases of food-borne illness and then trace them back through the food chain to identify the source.

At the time of our audit, roles and responsibilities for food safety surveillance were evolving. Traditionally, Health focused on public health and MAFRI focused on animal health, with a particular focus on the dairy sector. However, in recent years, these lines have blurred as animal diseases with implications for human health and food safety have emerged. As food-borne illness may affect the entire food chain, Health and MAFRI need to work together on food safety surveillance. The 2 departments knew this and had been meeting to discuss surveillance activities and to better define their roles and responsibilities. Officials were discussing how to share surveillance data and avoid duplicating efforts, how to manage joint animal and human health issues, how to address personal health information issues, and how to identify areas needing increased surveillance. Together with other departments, such as Conservation and Water Stewardship, they were also developing a framework for working collaboratively on issues impacting human health, animal health and the environment.

2. Enforcing compliance with food safety standards

2.1 Food safety standards

2.1.1 Standards consistent with other jurisdictions, except for food handler training

We expected the Province's food safety standards to be generally consistent with other jurisdictions, and that the standards would be periodically reviewed and updated.

We reviewed the Province's food safety standards and found they were mostly consistent with those found in other Canadian jurisdictions. We focused our review on the standards addressing the 10 most critical hazards described in the inspection policies Health was drafting at the time of our audit. These standards were as follows:

- Cold holding of hazardous foods should be at or below 4°C
- Hot holding of hazardous foods should be at or above 60°C
- Thermometers should be located in hazardous food storage areas
- All food sold or processed should be from approved sources and fit for human consumption
- Ready-to-eat foods should be separated from raw foods during handling, preparation and storage
- Hot and cold running water should be available where food is processed, prepared, and manufactured and where utensils are washed
- Food contact surfaces should be cleaned and sanitized
- Food and equipment should be protected from contamination
- Satisfactory hand washing should occur at appropriately located hand wash basins
- Food handlers should be free of any disease or condition that may spread through food and food handlers should minimize direct contact with food.

In addition, we reviewed the standards in other jurisdictions to see if they included any significant standards not in place in the Province. There was mandatory food handler training in 6 of the 9 other Provinces. In Manitoba, there was only mandatory training in Winnipeg. This resulted from a City of Winnipeg by-law stating:

- *"No person shall operate a food service establishment, excluding retail food stores, unless the person in charge has successfully completed the Certified Food Handler Training Program*
- *No person shall operate a food service establishment employing more than five persons on duty at any one time, unless there is a person in*

charge present during all operating hours who has successfully completed the Certified Food Handler Training Program

- *The on duty person in charge shall post their Food Handler Training Program Certificate in a prominent place in the food service establishment".*

The City offered a 1 day Certified Food Handler training course that concluded with an exam requiring participants to score a minimum of 70% to obtain their food handler certificate. The course covered food-borne illness, health and hygiene, receiving and storing food, serving and dispensing food, and cleaning and sanitizing food premises and equipment. The exam could also be challenged without taking the course. Provinces with mandatory food safety training had similar requirements.

Health officials told us they had considered mandatory food handler training, but could not find a cost-effective delivery system. Some provinces, such as British Columbia, put their food handler training on the web. This might be more cost-effective than the training previously considered and found to be too expensive.

British Columbia required food service establishments to have written procedures for identifying critical control points, setting critical limits for those control points, ensuring adherence to the critical limits, and taking action if critical limits were not adhered to. These procedures were based on HACCP food safety principles. Manitoba's food safety standards did not include any similar requirement. And although MAFRI promoted the adoption of food safety programs, such as HACCP, to food processors, Health did not similarly promote food safety programs to food service establishments, such as restaurants.

Some provinces required establishments to maintain written policies and records concerning cleaning, sanitizing and controlling pests. Manitoba's standards in these areas were generally consistent, but did not require establishments to have written policies.

At the time of our audit, both MAFRI and Health were operating under *The Public Health Act*. The most recent version of this Act came into force in April 2009. The primary regulation under *The Public Health Act* concerning food safety was *The Food and Food Handling Establishments Regulation*, which was created in 1988 and amended in 2009 to ensure it was consistent with the newly amended *Public Health Act*. There was no detailed comparison to food safety standards in other jurisdictions done at this time. While MAFRI had developed a new *Food Safety Act*, it was not yet in force, although MAFRI expected the Act and its regulations to be in effect within the next 2 years.

Recommendation 5: We recommend that MAFRI and Health periodically review and update food safety standards in Manitoba to ensure they are consistent with those in most other Canadian jurisdictions.

Recommendation 6: We recommend that MAFRI and Health prepare a documented analysis of the costs and benefits of requiring food handler training in Manitoba that considers using web-based training already developed by other jurisdictions.

2.2 Obtaining and maintaining food establishment information

2.2.1 Food establishment database available, not always updated

We expected inspectors to use a common up-to-date database that included all food handling establishments in Manitoba and key information for each establishment, and that Health and MAFRI would have processes in place to ensure this information was complete and accurate.

In July 2009, MAFRI and Health began using a common electronic food establishment database that allowed access to all inspection and permit information for each facility. They added a complaints module in December 2009. The database, called Hedgehog, was initially populated from various sources, but primarily from an older facilities database used by the Department of Conservation. Management populated the new database with facility names and contact information, but not old inspection reports. These reports were still available to inspectors, but only on paper.

Inspectors were expected to update database information as part of their inspections. However, several food establishments had missing contact information, even though an inspection had recently been done. Also, 1 MAFRI inspector and 3 Health inspectors were not consistently using the database to do their inspections.

MAFRI and Health officials told us they used various sources to periodically test the accuracy and completeness of the food establishment database. The City of Winnipeg Business License Branch notified them when it issued a new business license to a food establishment. Staff from MAFRI and Health also periodically searched sources such as the Manitoba Food Products Directory, the phone book, and the Internet for establishments not in the database. But they did not keep any related documentation. Documenting the results of these searches would help management determine if these processes were effective in ensuring the accuracy and completeness of the database.

Recommendation 7: We recommend that MAFRI and Health ensure that all staff record inspections and complaints in the Hedgehog database, update food establishment information during inspections, and document work to test the accuracy and completeness of the database and assess its effectiveness.

2.3 Conducting inspections

2.3.1 Inspection priority and frequency not risk-based

We expected food establishments with higher food safety risks would be inspected on a priority basis and more frequently. Both departments indicated they planned to implement a risk-based approach. However, at the time of our audit, both followed an informal policy of inspecting every food establishment annually, with additional inspections to follow up violations and complaints.

As a first step in implementing a risk-based approach, MAFRI inspectors were completing risk assessment questionnaires during their initial inspections of food processing and warehouse establishments. The questionnaires collected information on each establishment's general location, building construction condition, water source, cooling and freezing activities, processing of high risk foods, food safety programs, staff with food safety training, and size or level of activity, as well as historical data related to complaints, food-borne illnesses, and inspections. MAFRI planned to use this information to produce an overall risk rating for each establishment and had hired a consultant to help them develop this more risk-based approach.

Most other Canadian jurisdictions used a risk-based process to set inspection frequency. Inspection policies typically required each facility to receive 1-3 inspections a year, depending on the facility's assessed risk, with additional inspections to follow up violations and complaints, as required. Criteria to assess risk varied, but typically included factors such as:

- The type and variety of food being served or processed
- The extent of food handling during preparation and processing
- The production volume
- The establishment's history of non-compliance with food safety standards
- Consumer complaints
- Food safety recalls
- Enforcement actions taken
- Whether the food establishment had been implicated or confirmed as a source of food-borne illness or outbreak.

Recommendation 8: We recommend that MAFRI and Health use a risk-based approach to set the priority and frequency of inspections. This should include development of evidence-based risk factors and risk ratings for facilities, and consider the inspection frequency in other provinces.

2.3.2 Annual inspection targets could not be met

Neither department was achieving their informal goal to annually inspect every food facility. Extrapolating the number of inspections done for the year ending June 30, 2010, it would take MAFRI 2.8 years and Health 2.5 years to inspect each food establishment at least once.

For the year ending June 30, 2010, MAFRI's 4 inspectors completed inspections of 176 of the 497 food processing and warehouse facilities in the inspection database. Health's 24 inspectors completed inspections of 2,691 of the 6,897 food service and retail facilities. An establishment can be assigned more than 1 facility number if it houses several different operations. For example, a restaurant with a lounge is assigned 1 facility number for the restaurant and another facility number for the lounge. Each of these facilities would receive its own inspection. Figures 1 and 2 show more detailed inspection results for MAFRI and Health.

Figure 1: MAFRI annual inspection targets not being achieved

	Year ended June 30, 2010		
MAFRI offices	**Annual target: all facilities assigned to office**	**Inspections completed**	**Percentage of target achieved**
Brandon	249	111	45%
Winnipeg	138	59	43%
Dauphin	110	6	5%
Total	**497**	**176**	**35%**

Source: MAFRI food safety database reports

Figure 2: Health annual inspection targets not being achieved

Year ended June 30, 2010

Region	Annual target: all facilities assigned to region	Inspections completed	Percentage of target achieved
Winnipeg	2,291	1,116	49%
Central – South East	1,351	589	44%
Eastern – Interlake	1,045	311	30%
West – North	2,210	675	31%
Total	**6,897**	**2,691**	**39%**

Source: Health food safety database reports

2.3.3 Inspections not always unannounced or done at riskier times

We expected inspections to be done on an unannounced basis and when riskier activity was occurring, whenever possible. Without the element of surprise, an inspector may not get an accurate sense of the way a food establishment typically operates. Visiting food establishments at different times (including peak periods, evenings and weekends) allows inspectors to observe activities and staffing levels that may have greater risks than those that would be found during normal weekday hours.

Both departments had informal policies in this area. Health inspectors told us they were expected to perform their inspections on an unannounced basis. MAFRI inspectors told us they were expected to conduct pre-arranged inspections because these would be the first MAFRI inspections since oversight responsibility was transferred from Health and they needed to ensure a person in authority would be there to assist them in completing their risk assessment questionnaires. Both were expected to perform inspections during weekdays, typically between 9am and 5pm, although exceptions were made for facilities operating infrequently or outside of these hours. Inspectors told us they were not required to record the time of their inspections and did not typically schedule inspections based on when riskier activity might be occurring.

In a sample of 80 food service and retail inspection reports, about 50% of the inspections were unannounced. In a sample of 20 food processing and warehouse inspection reports, 35% of the inspections were unannounced. In both cases, the results were inconsistent with Health's and MAFRI's informal policies.

> **Recommendation 9:** We recommend that MAFRI and Health inspectors conduct all routine inspections on an unannounced basis, with some during times when higher risk activities are likely to occur, and that they document the time of their inspections.

2.3.4 Inspection reports not always complete

Starting July 1, 2009, both departments' informal policies required inspectors to use checklists (maintained in the Hedgehog database) for inspections. Each food establishment in the database was assigned a category code and each category had a unique inspection checklist. Previously, the standard forms did not include checklists.

The checklists were consistent with *The Food and Food Handling Establishments Regulation*. If inspectors found violations, they were to provide clear descriptions of the violations and required corrective actions. Both departments expected inspection reports to be explained to food establishment representatives, signed by both an inspector and a food establishment representative, and a copy of the report left with the establishment.

In a sample of 20 food processing and warehouse inspection reports:

- 60% of the Hedgehog inspection checklists had unanswered questions. On average, this represented 6% of the questions, and in 1 case 50% were unanswered
- 2% of the violations and 4% of the corrective actions were not clearly described
- 12% of the violations were in the closing comments and inconsistent with the response to the related question on the checklist
- 50% of the inspection reports were not signed by an establishment representative and a further 10% were signed by neither the establishment representative nor the inspector.

In a sample of 80 food service and retail establishment inspection reports:

- 94% of the Hedgehog checklists had unanswered questions. On average, this occurred 16 times per inspection report, but in several reports answers were provided only for questions where violations were found
- 1% of the violations and 2% of the corrective actions were not clearly described
- 9% of the inspection reports were not signed by an establishment representative and a further 4% were signed by neither the establishment representative nor the inspector.

> **Recommendation 10:** We recommend that MAFRI and Health improve inspection documentation to ensure that:
>
> - All checklist questions are answered
> - Violations and required corrective actions are clearly described
> - Inspection reports are signed by both inspectors and establishment representatives.

2.3.5 Outsourced inspections require updated service standards and better performance information

We expected MAFRI to have service standards for the inspections outsourced to CFIA. These service standards would include such information as the number and types of inspections to be performed, the food safety standards to be applied, the follow-up procedures required to ensure violations are corrected, and guidelines for escalating enforcement actions. We also expected that sufficient performance information would be obtained to ensure the service standards were met.

Inspections of non-federally registered slaughterhouses in Manitoba have been outsourced to CFIA since 1965, with the most recent agreement in place since 1984. The agreement sets out roles and responsibilities, food safety standards to be used (those provided in the federal *Meat Inspection Act*, last updated in 2005), and a cost structure (last updated in 1995). Either party can terminate the agreement by giving 12 months notice. At the time of our audit, MAFRI and CFIA were reviewing this agreement.

MAFRI expected CFIA inspectors to conduct pre- and post-slaughter inspections of each animal slaughtered in all of the 28 provincially registered slaughterhouses in Manitoba (2 poultry, 4 swine, and 22 with mixed operations that include cattle, swine, lamb, goat, sheep and bison). In addition, MAFRI informally expected CFIA Regional Veterinarians to conduct 2 to 3 inspections of each slaughterhouse every year and CFIA's Animal Program Inspector to inspect each facility annually to ensure the consistency of the routine inspections. MAFRI received copies of all CFIA inspection reports and reviewed them for any serious infractions.

The CFIA services being received had been in place for many years. MAFRI had not recently reviewed these services to ensure they were consistent with its assessment of food safety risks associated with the slaughter process.

We selected 5 slaughterhouse files to assess if MAFRI ensured that service standards were being met. We found the expected informal inspection levels were being achieved, and violations and corrective actions were clearly described. But documentation of follow-up of violations was not always provided and enforcement action was not escalated for repeated non-critical violations. MAFRI officials told us they were seeking legal advice on whether they could take enforcement action (such as issuing fines) based on inspections by third parties, or if they needed to conduct their own inspections.

> **Recommendation 11:** We recommend that MAFRI use current risk assessments to develop and periodically update service standards for outsourced inspections and ensure those standards are being met.

2.3.6 Routine dairy inspections halted, contrary to regulation

In 2009/10, MAFRI officials decided to temporarily stop routine dairy inspections, even though *The Dairy Regulation* required each dairy farm to be inspected 2 times per year. However, inspectors continued to do a limited number of inspections to facilitate dairy farm transfers and to follow up complaints. Management believed the dairy farms had a lower food safety risk than the food processing plants and therefore decided to concentrate the limited inspection resources on the processing plants. As well, Manitoba dairy farmers were in the process of adopting the national food safety program, Canadian Quality Milk, developed by the Dairy Farmers of Canada. One of the objectives of the program was to have all farmers implement it by 2012. The Dairy Farmers of Manitoba organization was working closely with Manitoba dairy farmers to achieve this objective. The Dairy Farmers of Manitoba told us that as of June 30, 2010, about 56% of Manitoba dairy farmers had implemented the Canadian Quality Milk food safety program.

The Dairy Regulation was last updated in 1998. MAFRI management realized several years ago that the regulation required updating, and in 2008 they decided that this would be done in conjunction with the planned *Food Safety Act*. However, this update has not occurred in a timely manner. As a result, MAFRI has not been in compliance with *The Dairy Regulation* for an extended period of time. Also, in the interim, we expected MAFRI to continue inspecting dairy farms with a history of serious and repeat violations, even if management felt the overall food safety risk posed by dairy farms was relatively low.

> **Recommendation 12:** We recommend that MAFRI expedite updating *The Dairy Regulation* to reflect its assessment of the related food risk and, in the interim, ensure that dairy farms with a history of serious and repeat violations continue to be inspected.

2.3.7 Complaints handled adequately, with some exceptions

We expected actions taken to follow up food safety complaints to be prompt and reasonable based on the risk to food safety. We also expected complaints and related investigation activities to be documented and included in department records for each food establishment.

Food safety complaints were received from calls to Winnipeg's 311 phone number, as well as from direct calls to Health and MAFRI offices. Complaints were recorded by department staff and then distributed to the inspectors in charge of the related areas. Before the electronic database complaint module started in December 2009, complaints were not centrally tracked, other than for complaints received through the 311 phone line. After December 2009, all complaints were to be centrally tracked and the details of the complaint and follow-up actions documented in each establishment's file.

Inspectors used their professional discretion to decide how to respond to complaints. A complaint might prompt a full inspection or an inspection more narrowly focused on the complaint. Health expected every complaint to be responded to within 24 hours, although this did not mean all related work had to be finished in that time.

We reviewed a sample of 15 complaints received by Health and found that, in almost all cases, there was adequate documentation of the complaint and follow-up actions. However, documentation of actions taken could have been improved in 2 cases.

As well, follow-up actions in most cases were prompt and reasonable based on the underlying food safety risk, with appropriate full or partial inspections. But in 2 cases involving suspected food poisoning, samples were obtained from the complainants and promptly sent for testing, but in 1 case a facility inspection was not performed until 7 days after taking the samples, and in the other case an inspection was not performed.

MAFRI received no complaints between June 2009, when it first assumed responsibility for food processing and warehouse establishments, and December 31, 2009.

2.4 Following up violations and escalating enforcement

2.4.1 Violations not always followed up to ensure correction

We expected each violation to be followed-up to ensure it was corrected. Follow up might be done by re-inspection or by obtaining other evidence, such as a paid invoice for goods or services received by the establishment to correct the violation. Without adequate follow up, food establishments may not realize it is important to promptly correct violations.

MAFRI officials decided not to follow up violations until every food establishment had first received 1 routine inspection. With only 4 inspectors, they felt it was initially more important to assess the food safety risk of the entire population through inspection of all facilities than to follow up violations. A sample of 20 food processing establishment and warehouse inspection reports with a total of 90 violations confirmed that none of the violations were followed up; 14 of these were critical violations.

Health's policy was to follow up violations as soon as possible after the correction timeframes provided by the inspectors. In a sample of 80 food service and retail establishment inspection reports with a total of 258 violations, only 239 violations required follow up as 19 were corrected during the inspections. Only 35% of the 239 violations were followed up and, of these, only 68% promptly. In addition, 107 of the 239 violations requiring follow up were critical violations. Of those critical violations, only 37% were followed up and, of these, only 65% promptly.

> **Recommendation 13:** We recommend that MAFRI and Health ensure all violations are promptly followed up and corrected, with a focus on critical violations.

2.4.2 Escalating enforcement options in place

Inspectors had various enforcement options available to respond to food safety standard violations found during inspections. In order of increasing severity, these included:

- Requesting corrective action
- Issuing a written warning
- Issuing a fine ranging from $199.80 to $655.65
- Temporarily closing the food establishment
- Issuing a written health hazard order
- Charging an individual with committing an offence under *The Public Health Act*, which may result in a fine up to $50,000, imprisonment up to 6 months, or both
- Charging a corporation with committing an offence under *The Public Health Act*, which may result in a fine up to $500,000.

Health hazard orders and the ability to prosecute were added to *The Public Health Act* as of April 1, 2009. A person or corporation is guilty of a separate offence for each day the violation continues. Fines and jail time can double if offences involve failure to comply with an emergency health hazard order.

2.4.3 Enforcement action not always escalated for repeated serious violations

Figure 3 summarizes enforcement actions by Health and MAFRI over the last 3 years. Information on corrective actions requested was not tracked when inspection reports were paper based, so this information was not available until July 2009, when the Hedgehog database was implemented. At the time of our audit, MAFRI inspectors had not yet elevated enforcement beyond requesting corrective actions, so all other enforcement actions shown are related to Health's food safety inspections. Health officials indicated that the increase in enforcement actions over the 3 years resulted from improved enforcement training.

Figure 3: Enforcement actions increased over the last 3 years

Type of action	Fiscal year 2007/08	 2008/09	 2009/10
Corrective action request	n/a[1]	n/a[1]	8,124
Warning	33	80	137
Fine	6	30	39
Closure	13	9	14
Health hazard order	n/a[2]	n/a[2]	11
Prosecution recommended	n/a[2]	n/a[2]	0

Source: Manitoba Health and Manitoba Agriculture Food and Rural Initiatives

1 Not available as data not tracked prior to 2009/10

2 Not applicable as related legislation not in place prior to 2009/10

Health officials told us enforcement decisions were left to each inspector's discretion, within the following unwritten general guidelines:

- Warnings were to be issued when violations previously noted were not corrected
- Fines were to be levied when violations previously given warnings had not been corrected
- Health hazard orders were to be issued when fined violations were not corrected
- Prosecution was to be recommended if an establishment did not comply with a health hazard order.

Health did not have any guidelines on when establishments should be closed.

We examined a sample of 10 warnings issued by Health inspectors and reviewed past inspection reports to see if the underlying violations had been noted in prior inspections. In 50% of the cases the violation had been previously noted at least twice. That meant a warning should have been issued earlier and the warnings should have resulted in fines. Also, in 50% of the cases, there was no follow-up visit after the warning. And in 2 of the 5 cases followed up, the same violation as the 1 that triggered the original warning was found, but no further enforcement action was taken.

We also reviewed a sample of files to see if Health inspectors recommended prosecution for establishments with repeated serious violations. In 2009, Health issued 4 health hazard orders to 4 food establishments and they all received a later re-inspection. Only 1 re-inspection occurred promptly and it found all violations had been corrected. For the other 3, follow-up visits were not prompt and enforcement actions were not escalated for repeated serious violations. On average, follow-up visits for these 3 establishments occurred 55 days after the orders were issued, even though 22 of the 51 violations were classified as high-priority by the inspector, requiring correction within 24 hours. When follow up did occur, inspectors found 16 of the 22 high-priority violations had not yet been corrected. Only 1 food establishment was fined; the other 2 received no additional enforcement.

MAFRI officials told us the inspectors had discretion to use enforcement powers. But they were expected to discuss all planned enforcement activity, beyond requesting corrective action, with the Manager of Inspection and Auditing Services before proceeding. Closure of a food establishment required the Deputy Minister's approval. By the time of our audit, MAFRI had not issued any warnings, fines, or health hazard orders since June 2009, when it first assumed responsibility for the processing plants and warehouses. Management told us the inspectors had not come across any situations requiring these higher levels of enforcement.

> **Recommendation 14:** We recommend that MAFRI and Health ensure that inspectors use escalating enforcement action (warnings, fines, closure orders, health hazard orders, and prosecution) when repeated serious violations are not corrected.

2.5 Issuing and renewing food establishment permits

The Food and Food Handling Establishments Regulation requires all food handling establishments to complete and file a registration form approved by the Minister. It also requires all food handling establishments to operate with a valid permit, except where:

- Only non-potentially hazardous foods are sold or displayed for purchase
- Sanitation and food safety are regulated by the Federal Government or an agency of the Federal Government, by a municipality, or under another Act of the Legislature.

At the time of our audit, Health issued annual permits to food service establishments (such as retail food stores, restaurants, and mobile food units) that expired March 31 of each year. MAFRI issued permits without expiry dates to processing plants and warehouses. MAFRI officials said they planned to issue annual operating licenses under *The Food Safety Act*. No permits were transferable between persons or food establishments.

We reviewed the permitting process in other jurisdictions and found some permits expired annually, while others had no expiry date.

2.5.1 Some initial permits issued before all requirements met and annual renewals issued automatically

Both departments required permit applicants to submit registration forms with the following information: establishment name, establishment type, owner and establishment contact information, proposed opening date, and type of registration (new owner, new construction, or extensive remodel). Applicants also had to attach the proposed menu or product and equipment listings. In addition, applicants building new facilities or significantly modifying existing ones had to submit copies of building plans. Inspectors were to review these plans to ensure they complied with food safety standards and provide comments to applicants. Finally, all facilities were to be inspected, and all violations corrected before permits were issued.

We reviewed a sample of 5 food processing and warehouse files, as well as 10 food service and retail establishment files. We found registration forms were obtained and complete in most cases and inspections were completed in all cases. But violations found during the inspections were not always resolved before permits were issued.

Health inspectors automatically renewed previously issued annual permits, without any documented supporting rationale. They did not first consider the food establishment's history, including results and any outstanding violations from past inspections and complaints.

> **Recommendation 15:** We recommend that MAFRI and Health ensure that registration forms are complete and initial permits are not issued until all requirements have been met, including resolution of any outstanding food safety standard violations.

> **Recommendation 16:** We recommend that Health inspectors complete a documented review of a food establishment's history, including results and outstanding violations from past inspections, as well as any complaints received during the year, before renewing an annual permit.

2.6 Inspector qualifications, independence, policies and supervision

2.6.1 Inspectors had related training and experience

All of MAFRI's inspectors had over 10 years of experience inspecting dairy farms. They also received training on their expanded duties of inspecting food processing establishments and warehouses. In addition, MAFRI's inspectors job shadowed Health and CFIA inspectors and completed joint inspections with them as part of their training.

Health's inspectors were all Certified Public Health Inspectors (PHIs), or PHIs-in-training who were supervised by PHIs. All PHIs must follow a code of ethics, standards of practice, and professional development requirements set by the Canadian Institute of Public Health Inspectors.

2.6.2 Conflict-of-interest policies in place, but process requires improvement

We expected processes to be in place to ensure inspectors were independent and to manage potential conflict-of-interest situations.

Both departments followed the Province's Conflict-of-Interest Policy. It requires employees to declare any potential conflicts of interest, both when they start their job and as circumstances change. Declarations of potential conflicts must be in writing to the employee's deputy minister or designate. The Policy also requires department management to ensure potential and actual conflicts of interests are identified, monitored and resolved.

MAFRI told us all employees completed conflict-of-interest declaration forms in 2008. After that, employees completed the forms when hired. We reviewed the personnel files of 18 MAFRI employees involved with food safety activities and found only 7 files had signed conflict-of-interest declaration forms. MAFRI management told us that, in 9 cases, the forms were not completed because 2 different human resources branches of the Department both thought the other was obtaining them. In the other cases, the forms were simply missed. There were 2 cases where employees had declared potential conflicts of interest, which were both adequately communicated to MAFRI's assigned designate. MAFRI management told us the designate verbally communicated back to the employees a conclusion that no actual conflicts existed. But there was no written communication to the employees or their supervisors.

Health told us it included references to the Policy in letters of employment, both when hiring and promoting employees. We reviewed the personnel files of 33 Health employees involved with food safety activities and found they all had signed letters of offer referencing the Policy. In 4 cases, employees declared potential conflicts of interest to Health's assigned designate, who communicated back to the employees any actions required to resolve the conflicts. But Health management told us this information was not always communicated to an employee's immediate supervisor or manager, who might be unaware of a need to manage a potential conflict of interest when assigning work to an inspector.

Given the importance attached to inspectors' independence, potential conflicts of interest should be regularly assessed. For example, it would be inappropriate for inspectors to be involved with facilities operated by family members or to accept gifts, such as free meals. Although the Province's Conflict-of-Interest Policy does not require it, MAFRI's and Health's practices could be strengthened by reminding inspectors annually of the Policy and requiring them to declare potential conflicts of interest, or indicate there are none.

> **Recommendation 17:** We recommend that MAFRI and Health enhance inspector independence by requiring inspectors to submit signed conflict-of-interest declaration forms annually, documenting related conclusions and actions taken, and ensuring relevant information is communicated to supervisors.

2.6.3 No formal policies and procedures to guide inspectors

We expected MAFRI and Health to have formal policies and procedures to help inspectors perform their duties, with guidance on:

- Conducting and documenting inspections
- Providing correction timeframes
- Following up violations
- Using enforcement powers
- Handling complaints
- Issuing permits.

Policies and procedures would not replace the inspectors' professional judgment; they would show how to exercise that judgment and help ensure consistency between inspectors in similar situations.

At the time of our audit, both departments relied on informal policies and procedures, although Health was drafting formal policies. While reviewing establishment files during our audit, we found inconsistencies in the way inspectors documented complaints and inspections, provided correction timeframes for violations, used enforcement actions, and issued permits. More details are in sections 2.3 to 2.5. The inconsistencies may have resulted from the lack of formal documented policies, combined with insufficient communication of policies through training sessions and staff meetings.

Recommendation 18: We recommend that MAFRI and Health develop written policies and procedures to guide inspectors' professional judgment and ensure greater consistency in conducting and documenting inspections, providing correction timeframes, following up violations, using enforcement powers, handling complaints, and issuing permits.

Recommendation 19: We recommend that MAFRI and Health regularly review and update inspection policies and procedures, and communicate them to staff through training sessions and staff meetings.

2.6.4 No quality assurance reviews of inspection files by supervisors

We expected supervisors to perform and document quality assurance reviews on a sample of files from each inspector, emphasizing higher risk files. Reviews would check if:

- Policies and procedures were followed
- Appropriate documentation was kept
- Timeframes for correcting violations were reasonable
- Proper follow-up occurred promptly
- Enforcement actions were appropriate.

This would allow management to provide feedback to inspectors and to note common issues requiring resolution, such as a lack of consistency in documenting inspections, and any staff training needs.

Neither department completed quality assurance reviews. However, managers in both departments told us they reviewed files when warranted, such as when an establishment complained about an inspection.

Recommendation 20: We recommend that MAFRI and Health implement and document quality assurance reviews of inspection files.

3. Promoting preventive food safety activities and programs

3.1 Education activities

We expected MAFRI and Health to provide food safety education to consumers and food establishments, and promote preventive food safety programs to producers and food establishments. We further expected these activities to reflect stakeholder input and be risk-based.

3.1.1 Education activities could be better linked to violations and consumer education enhanced

MAFRI and Health both provided food safety educational information to consumers and food establishments through:

- Pamphlets, electronic news bulletins, and public news releases
- Website information
- Training courses
- Attendance at trade shows and conferences
- Discussions with food establishment staff during inspections.

Pamphlets at Health and MAFRI regional offices were a mix of CFIA and provincial publications. Topics included the proper use of food thermometers, kitchen food handling and cleaning tips, and food safety on farms and in processing plants. In addition, each month MAFRI distributed e-bulletins to over 300 subscribers. These bulletins had information on upcoming food safety conferences and meetings, food safety tips, information about food safety programs, and new food processing fact sheets.

MAFRI's website had food safety information for farmers, food processors, and consumers. There were 24 food processing fact sheets, covering topics such as food recalls, water safety, and validation of food safety programs. There was also consumer information, including links to the CFIA website information on food recalls, food safety tips, food allergens and allergy alerts, and safe food storage. In addition, website users could send questions to MAFRI (112 questions were received in 2009).

Health's website focused on food safety information for food service and retail food establishments. It included links to various guidelines for complying with food safety standards, issued either by Health or jointly by Health and other departments. These included guidelines for restaurant construction and design, farmers' markets, mobile food service establishments, and temporary food service establishments. There were also links to the CFIA website and Manitoba's *Food and Food Handling Establishments Regulation.*

In 2009/10, MAFRI conducted 10 customized training sessions for individual food establishments. MAFRI also conducted 5 courses in each of the following:

- Good Manufacturing Practices (GMP)
- Hazard Analysis Critical Control Points (HACCP)
- Introduction to Internal Auditing (auditing GMP and HACCP plans).

Health's food safety inspectors delivered 10 offerings of a food safety course for food service workers in 2009/10. This was done in partnership with Assiniboine Community College (8 offerings) and University College of the North (2 offerings).

When developing educational initiatives, MAFRI and Health obtained stakeholder input in several ways. Both departments told us feedback and evaluation forms were typically completed after all course offerings and were considered when developing future course offerings. MAFRI tracked and considered information requests when developing educational material. Informally, the departments also obtained input through meetings with producer associations, food processing plants, and food service and food retail associations.

MAFRI and Health both monitored the external environment for emerging food safety issues and trends. Staff monitored food-borne illness outbreaks in other regions and many staff members subscribed to newsletters and news feeds related to food safety. Staff used this information in delivering food safety training, meeting with commodity groups, and providing public communications, such as information during the 2008 listeriosis outbreak.

MAFRI and Health did not formally identify and analyze the most critical violations of food safety standards typically found during inspections to help guide development of educational material. Such material, including posters and fact sheets, could be used by all inspectors and given to food establishments or made available online, supplementing the informal verbal education currently provided. Previously, Health provided stickers and posters about the importance of hand washing, but it did not develop material of this nature consistently.

Neither department had evaluated their food safety education efforts to see if there were any gaps or duplication of effort. In addition, despite the importance of consumer food safety awareness, neither department strongly emphasized it, nor was either department's responsibility for it clearly defined. As noted in the Background section, most food-borne illnesses can be prevented by following safe food handling practices at home. Appointing a lead department for consumer food safety education would be one way to coordinate and enhance efforts in this important area.

Recommendation 21: We recommend that MAFRI and Health better link their food safety education to trends in critical food safety standard violations found during inspections and coordinate and enhance their focus on consumer education and awareness.

3.2 Promoting food safety programs

MAFRI promoted preventive food safety programs by providing both information and financial assistance. These included Good Agricultural Practices (GAPs), Good Manufacturing Practices (GMPs); and Hazard Analysis Critical Control Points (HACCP). Health did not have any programs of this nature.

GAPs are designed by national industry groups and applied to farm production processes. MAFRI officials told us there were 24 different on-farm food safety programs (programs vary, depending on the type of food produced). An example is the Verified Beef Program designed by the Canadian Cattlemen's Association.

Manitoba's GMP Program is largely based on Ontario's GMP Program. Documenting each step, establishments assess personnel and processing environment hazards and then develop and implement corrective actions and on-going monitoring procedures to meet the standards. Establishments can obtain provincial recognition (which may help them in their marketing efforts) by applying to have their GMP Program audited.

HACCP is used in the food industry to identify potential food safety hazards so that key actions, known as Critical Control Points, can be taken to reduce or eliminate the risk of the potential hazard actually occurring. Manitoba's HACCP Advantage Program is based on a collection of internationally recognized standards, codes of practice, guidelines and other recommendations relating to foods, food production and food safety. Once establishments have implemented Manitoba's HACCP Advantage Program, they can apply to have their programs audited by MAFRI to obtain provincial recognition.

Under the Federal-Provincial-Territorial "Growing Forward" initiative, the Federal Government is giving Manitoba $12.5 million for the 4 years ending March 31, 2013 for food safety initiatives. MAFRI has allocated 60% of this funding for on-farm programs and 40% for post-farm programs. MAFRI also contributes staffing for the programs. Any unused funds at March 31, 2013 must be returned to the Federal Government.

Provincial financial assistance for food safety programs was as follows:

- Producer grants up to $2,000 for first implementation of a national on-farm food safety program and up to $500 for each additional commodity program implemented
- Producer grants up to $5,000 for piloting Manitoba's GAPs
- Processor grants up to $15,000 for implementing GMPs
- Processor grants up to $20,000 for implementing HACCP plans.

All grants covered 90% of the eligible costs, up to the maximum amounts. Examples of eligible costs included:

- Material and supplies for creating manuals and plans
- Consultant fees for developing and implementing recognized Provincial/Federal programs
- Facility leasing costs
- Staff training
- System audit and certification costs.

Eligible applicants successfully completing their first audit of a national on-farm food safety program, Manitoba's GAP program, or other approved programs could use any remaining implementation funds to buy approved related equipment.

For the year ending December 31, 2009, MAFRI approved 142 applications totalling $281,000 for on-farm funding and 9 applications totalling $236,000 for post-farm funding.

MAFRI also helped on-farm applicants by providing related training and outreach activities, as well as food safety program manuals. And MAFRI officials told us that post-farm applicants were encouraged to send their written programs to MAFRI staff for feedback. Since the start of the Growing Forward initiative, 9 applicants have been helped this way.

3.2.1 Promotion considered stakeholder input

We expected MAFRI to obtain stakeholder input to guide their food safety promotion efforts. We also expected it to promote food safety programs first and more actively to higher-risk establishments.

MAFRI met with the various commodity associations to obtain ideas for its on-farm food safety promotion efforts and information on the type of assistance wanted, such as training, manuals, and approved equipment. Eight (8) commodity group steering committees were created to help decide the direction of outreach activities and give feedback to MAFRI on its promotion efforts. In addition, MAFRI conducted research and analysis to assess each commodity's food safety risks, the total number of commodity producers, and the percentage of those producers that had already implemented food safety programs. MAFRI then tailored its on-farm food safety system promotion efforts accordingly.

MAFRI officials told us they consulted with stakeholders on how to spend Manitoba's allocated Growing Forward post-farm funding, but not on how best to promote the implementation of food safety programs. MAFRI developed a list of about 250 processing plants eligible for funding, mailed them brochures and followed-up with phone calls. It did not focus its initial promotion efforts on higher-risk facilities. However, MAFRI officials told us they had analyzed the results of initial promotion efforts and planned to tailor future efforts to higher-risk food establishments. They also told us they were considering raising grant amounts to encourage more facilities to adopt food safety programs.

3.2.2 Some applications approved before meeting all criteria

To be eligible to receive grants, producers and food establishments had to be:

- Non-federally registered food establishments
- Operating in Manitoba with a Canada Revenue Agency business number (GST number)
- Registered or permitted to operate in Manitoba, if required by legislation
- Either a food or drink processor, transporter, warehouser or food contact packaging manufacturer (for post-farm funding).

In addition, eligible costs had to be incremental, directly related to food safety programs, and incurred after application approval.

In a sample of 10 grant payment files (5 for on-farm and 5 for post-farm), all had supporting application forms. However, 1 application was approved without proof of registration. Another was approved with some non-incremental proposed expenses, because MAFRI felt it had not clearly communicated the rules on eligible expenses. MAFRI did not document its review of application packages before approving them.

> **Recommendation 22:** We recommend that MAFRI ensure applications for financial assistance to implement food safety programs meet the eligibility criteria before funding is approved and eligibility reviews are properly documented.

3.2.3 Implementation requirements and costs verified before funds paid, but not always well-documented

We expected MAFRI to verify that applicants met all implementation requirements for food safety programs before it paid them and to thoroughly document all verification work.

In a sample of 5 on-farm files, documentation in all 5 cases confirmed that a food safety system had been implemented. There was also documentation supporting the related expenses.

In a sample of 5 post-farm files, funding was triggered when applicants reached various milestones, such as when GMP or HACCP plans were written, implemented, and audited. Before advancing funds, MAFRI analysts verified the milestones were reached by reviewing food safety plans, visiting sites, and obtaining copies of audit certificates. The analysts then emailed the program manager saying that the processors had met the milestones and were eligible for payment. However, analysts did not thoroughly document the verification work and show that plans and site visits were satisfactory.

> **Recommendation 23:** We recommend that MAFRI thoroughly document its verification work before it pays post-farm grant funding for implementing food safety programs.

Response of officials and summary of recommendations

The results of this audit will assist Manitoba Health and Manitoba Agriculture Food and Rural Initiatives (MAFRI) in building upon and formalizing existing processes and focusing on specific areas for enhancement.

Since the Public Health Inspection program was transferred to Manitoba Health in 2007 from the Department of Conservation and the transfer of inspection responsibilities of non-federally registered processing plants and distribution facilities to MAFRI in 2009 many efforts have occurred. These include, transition/adjustment of staff, relocation of offices, staff orientation and training, establishment of inspection processes/expectations, promotion of preventative food safety programs like Hazard Analysis Critical Control Point (HACCP), food safety educational training for food processors, development of a computerized joint inspection database and response to public health emergencies. It is recognized that a higher level of planning, clarity of roles and public education with regards to food safety will move the program forward. Regular discussion on all of these aspects occurs between MAFRI and Health; efforts to formalize and document these processes will receive increased attention.

The collaborative relationship between MAFRI and Health is evolving and as the requirements related to the recommendations are formulated additional resources may be needed by both Departments.

Food safety strategic planning

Recommendation 1: We recommend that MAFRI and Health work together to ensure their individual food safety strategic planning is integrated and that it:

- **Identifies, assesses and controls risks to food safety**
- **Considers the appropriate mix of inspections, surveillance, industry and consumer education, and promotion of food safety programs**
- **Aligns resources and funding with established goals and priorities.**

> *Response:* Health and MAFRI plan to develop a Committee for Strategic Planning and designate a coordinator to ensure action is implemented. A senior level of ADMs from both Departments, to which the Committee and Coordinator will report, has been established. An Operational Working Group will address specific issues under the oversight of the Strategic Committee.

Performance measurement

Recommendation 2: We recommend that MAFRI and Health set measurable targets for inspections and food safety programs – including indicators of effectiveness, as well as outputs – and periodically compare results to targets to identify any actions required to respond to trends and improve results.

> ***Response:*** Performance measurement, goals, and targets will be included as a component of the Health, MAFRI strategic plan. The joint inspection database will assist in setting targets.

Recommendation 3: We recommend that MAFRI and Health enhance publicly available information on food safety to include data on compliance with food safety standards.

> ***Response:*** MAFRI and Health will establish a joint report on the outcome of food safety inspections.

Coordinating areas of shared provincial responsibility

Recommendation 4: We recommend that MAFRI and Health, together with the City of Winnipeg, fully document their respective inspection responsibilities, including responsibilities for facilities with mixed operations and exceptions to responsibilities based on established geographical boundaries.

> ***Response:*** Formal definitions of responsibilities will be developed building on the discussions that have occurred to date. A formal Memorandum of Understanding between jurisdictions will be established, where practical.

Food safety standards

Recommendation 5: We recommend that MAFRI and Health periodically review and update food safety standards in Manitoba to ensure they are consistent with those in most other Canadian jurisdictions.

> ***Response:*** Health will be reviewing *The Food and Food Handling Establishments Regulation* under *The Public Health Act.*
>
> MAFRI will utilize national food safety standards like the *National Dairy Regulation and Code*, review other Canadian jurisdictional food safety legislation and consider trends in international food safety legislation when drafting food safety regulations under *The Food Safety Act.*

Recommendation 6: We recommend that MAFRI and Health prepare a documented analysis of the costs and benefits of requiring food handler training in Manitoba that considers using web-based training already developed by other jurisdictions.

> *Response:* MAFRI and Health will carry out this analysis within the Operational Working Group.

Obtaining and maintaining food establishment information

Recommendation 7: We recommend that MAFRI and Health ensure that all staff record inspections and complaints in the Hedgehog database, update food establishment information during inspections, and document work to test the accuracy and completeness of the database and assess its effectiveness.

> *Response:* MAFRI and Health will develop a joint policy on the utilization of the Hedgehog database and train staff relative to the policy.

Conducting inspections

Recommendation 8: We recommend that MAFRI and Health use a risk-based approach to set the priority and frequency of inspections. This should include development of evidence-based risk factors and risk ratings for facilities, and consider the inspection frequency in other provinces.

> *Response:* MAFRI and Health will explore operational models for risk-based approaches aimed at establishing a suitable system for Manitoba inspections. This will include looking at modifying the Hedgehog database to facilitate risk-based inspection.

Recommendation 9: We recommend that MAFRI and Health inspectors conduct all routine inspections on an unannounced basis, with some during times when higher risk activities are likely to occur, and that they document the time of their inspections.

> *Response:* For the most part, unannounced inspections will occur in most food handling establishments. In some instances, for example, inspections for new permits need to be scheduled to ensure availability of owner/manager and re-inspections also need to be scheduled. MAFRI and Health will develop a written policy to guide staff.

Recommendation 10: We recommend that MAFRI and Health improve inspection documentation to ensure that:

- **All checklist questions are answered**
- **Violations and required corrective actions are clearly described**
- **Inspection reports are signed by both inspectors and establishment representatives.**

> ***Response:*** MAFRI and Health will undertake joint inspection policy development, staff training and monitoring to ensure completeness of documentation, where practical.

Recommendation 11: We recommend that MAFRI use current risk assessments to develop and periodically update service standards for outsourced inspections and ensure those standards are being met.

> ***Response:*** MAFRI will develop written policy for outsourced inspections and will develop audit procedures to ensure policy standards are being met wherever possible.

Recommendation 12: We recommend that MAFRI expedite updating *The Dairy Regulation* to reflect its assessment of the related food risk and, in the interim, ensure that dairy farms with a history of serious and repeat violations continue to be inspected.

> ***Response:*** MAFRI will develop *The Dairy Regulation* as part of the food safety regulations being developed under *The Food Safety Act*. In the interim, MAFRI will continue to inspect high-risk dairy producers.

Following up violations and escalating enforcement

Recommendation 13: We recommend that MAFRI and Health ensure all violations are promptly followed up and corrected, with a focus on critical violations.

> ***Response:*** MAFRI and Health will develop protocols for follow up and staff training. In addition, Departments will explore options in the Hedgehog database to facilitate an automated notification system for staff.

Recommendation 14: We recommend that MAFRI and Health ensure that inspectors use escalating enforcement action (warnings, fines, closure orders, health hazard orders, and prosecution) when repeated serious violations are not corrected.

> *Response:* MAFRI and Health will develop a policy to achieve this. The Operations Working Group will oversee the implementation of the policy.

Issuing and renewing food establishment permits

Recommendation 15: We recommend that MAFRI and Health ensure that registration forms are complete and initial permits are not issued until all requirements have been met, including resolution of any outstanding food safety standard violations.

> *Response:* MAFRI and Health will develop a protocol for this.

Recommendation 16: We recommend that Health inspectors complete a documented review of a food establishment's history, including results and outstanding violations from past inspections, as well as any complaints received during the year, before renewing an annual permit.

> *Response:* MAFRI and Health will develop a joint policy/protocol for this, where practical. The Hedgehog database will be utilized to assist in the documented review.

Inspector qualifications, independence, policies and supervision

Recommendation 17: We recommend that MAFRI and Health enhance inspector independence by requiring inspectors to submit signed conflict-of-interest declaration forms annually, documenting related conclusions and actions taken, and ensuring relevant information is communicated to supervisors.

> *Response:* MAFRI and Health will work with the Civil Service Commission to establish this process.

Recommendation 18: We recommend that MAFRI and Health develop written policies and procedures to guide inspectors' professional judgment and ensure greater consistency in conducting and documenting inspections, providing correction timeframes, following up violations, using enforcement powers, handling complaints, and issuing permits.

> *Response:* MAFRI and Health will develop inspection and enforcement policies, jointly where practical. Existing policies and procedures will be reviewed, modified where necessary and documented.

Recommendation 19: We recommend that MAFRI and Health regularly review and update inspection policies and procedures, and communicate them to staff through training sessions and staff meetings.

> *Response:* MAFRI and Health will review inspection and enforcement policies on a regular basis, and communicate these to staff through joint training sessions.

Recommendation 20: We recommend that MAFRI and Health implement and document quality assurance reviews of inspection files.

> *Response:* MAFRI and Health will establish a process to review inspection files.

Education activities

Recommendation 21: We recommend that MAFRI and Health better link their food safety education to trends in critical food safety standard violations found during inspections and coordinate and enhance their focus on consumer education and awareness.

> *Response:* MAFRI and Health will review critical food safety violations and based on the information will modify education programs offered to food establishments. Consumer education and awareness is a multi-jurisdictional responsibility and MAFRI and Health will look for opportunities to coordinate efforts in various federal/provincial/territorial/municipal forums such as the Federal/Provincial/Territorial Food Safety Committee or the provincial Food Safety Advisory Committee.

Promoting food safety programs

Recommendation 22: We recommend that MAFRI ensure applications for financial assistance to implement food safety programs meet the eligibility criteria before funding is approved and eligibility reviews are properly documented.

Response: MAFRI has implemented the recommendation.

Recommendation 23: We recommend that MAFRI thoroughly document its verification work before it pays post-farm grant funding for implementing food safety programs.

Response: MAFRI has implemented the recommendation.

Chapter 5

Personal Injury Protection Plan

Manitoba Public Insurance

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Main points

What we examined

The Personal Injury Protection Plan (PIPP) administered by Manitoba Public Insurance (MPI) compensates people injured in motor vehicle accidents for financial losses and helps them recover as fully as possible.

We examined MPI's systems and practices for:

- Ensuring that claimants receive all and only the PIPP benefits they are entitled to
- Calculating PIPP benefit amounts
- Managing claimant rehabilitation
- Measuring and reporting on PIPP performance.

Why it matters

Every year, over 16,000 Manitobans report injury claims resulting from motor vehicle accidents. Most suffer minor soft tissue or whiplash injuries and are able to continue to work or return to health and work soon with minimal help. But about 20% are more seriously hurt and, in some cases, cannot return to their pre-accident activities. Many face multiple challenges, both physical and psychological, as a result of their accidents. These claims account for roughly 80% of PIPP's annual paid claim costs of about $100 million. Because of PIPP's important objectives, the vulnerability and challenges of seriously injured claimants, and the significant underlying costs, we undertook this audit to assess how MPI was managing the PIPP program.

What we found

MPI properly verified eligibility for PIPP benefits before paying them and adequately supported most decisions to deny or end benefits. But MPI did not always offer or provide benefits promptly or consistently. MPI needs to improve rehabilitation planning, supervisory reviews of claim files, and performance information. It also needs to more clearly define certain benefits and their eligibility rules. Delayed benefits are not just inconvenient—they can also potentially cause financial hardship and hinder medical improvement and return to work. Inconsistent decision-making inadvertently treats similar claimants differently.

At the time of our audit, MPI was undergoing significant change and many of its change initiatives may help resolve these issues. During our audit, MPI began:

- Replacing its paper-based claim files with electronic files as part of a new claims management system
- Changing its organizational structure to better coordinate case-management services
- Helping case managers more proactively manage injury claims by building rehabilitation planning tools (such as rehabilitation plan templates and disability duration guidelines) into its new claims management system
- Extracting the enhanced performance information available in its new claims management system
- Revising various policies and processes, including drafting a policy to reinterpret eligible rehabilitation expenses under section 138 of *The Manitoba Public Insurance Act*, which requires MPI to help claimants in their "return to normal life" and "reintegration into society".

Other significant areas requiring MPI's attention were a need to:

- Provide more benefit information, particularly for claimants with complex claims
- Provide better explanations and plainer language in decision letters
- Strengthen procurement practices and the accountability framework for service providers
- More regularly and rigorously review and update certain PIPP benefits to ensure they remain reasonable and equitable.

Other important findings included:

- Most commonly used PIPP benefits were clearly defined
- Processes to prevent and detect program abuse by claimants and service providers were adequate
- Appeals processes were in place, although the number of unresolved appeals at the Claimant Adviser Office and appeals which had not yet been set for hearing at the Automobile Injury Compensation Appeal Commission needed to be reduced
- Benefits were calculated accurately, although changes in personal circumstances affecting benefits were not always flagged promptly and annual income tax reviews were not always timely
- Processes to prevent conflicts-of-interest for external independent medical examiners and internal healthcare services staff could be enhanced
- All case managers had related training and experience
- Documented support for the post-accident incomes that MPI deemed claimants capable of earning after reaching maximum medical improvement and completing their vocational rehabilitation needed to be strengthened.

Background

PIPP benefits

The Manitoba government introduced the Personal Injury Protection Plan (PIPP), to be administered by MPI, in 1994. It compensates claimants for financial losses and helps them recover as fully as possible from injuries sustained in motor vehicle accidents. PIPP benefits and MPI's responsibilities for the PIPP program are set out in Part 2 (the Universal Bodily Injury Compensation section) of *The Manitoba Public Insurance Corporation Act* (MPIC Act) and related regulations. In 2009, this legislation was amended to define catastrophic injuries and enhance benefits for catastrophically injured claimants, such as quadriplegics, paraplegics, and those with significant brain injuries, amputations or burns. Key PIPP benefits are described below.

Income replacement benefits provide claimants with 90% of their net employment income if they are off work more than the first 7 days after their accident. Net employment income is calculated by adding together wages, the employer's share of benefits, bonuses, and overtime, and then subtracting various deductions (such as estimated income tax and Canada Pension Plan and Employment Insurance premiums). The estimated income tax deduction takes into consideration child and spousal support payments, marital status, and number of dependents. For PIPP purposes, a claimant's gross employment income generally cannot be less than minimum wage (industrial average wage for the catastrophically injured and students unable to return to their studies), and cannot exceed a maximum amount that is indexed annually. In 2011/2012, the maximum is $83,000. If claimants returning to the work force after their accidents cannot earn amounts equal to their pre-accident income, they are eligible for top-up income replacement benefits.

Medical benefits cover required medical treatment from chiropractors, physiotherapists, dentists, optometrists, athletic therapists, and registered psychologists. MPI also pays for any necessary prescribed medication and medical equipment (such as wheelchairs, orthotics and prosthetics), as well as related travel costs.

Personal care assistance benefits provide funding for qualified caregivers or family members to assist claimants with daily living activities they can no longer perform themselves because of their injuries, such as dressing, bathing, toileting, eating, preparing meals, or performing household chores. External occupational therapists hired by MPI evaluate a claimant's ability to independently perform various daily living activities and complete a scoring grid that allows MPI to calculate benefits. In 2011/12, the maximum assistance available is $4,142 a month ($4,953 for catastrophically injured claimants). Claimants requiring a higher level of care may qualify for assistance from other government agencies.

Permanent impairment benefits compensate claimants for any permanent physical or cognitive damage from their accidents, such as scarring, loss of mobility in a limb, paralysis, amputation of a body part, or loss of mental function. External healthcare providers hired by MPI determine a claimant's functional impairment after conducting a detailed assessment of the nature and extent of his or her injuries. MPI then calculates the award based on the legislated rules, multiplying the percentage impairment by the maximum amount available for the year in which the accident occurred. For accidents occurring in 2011/12, the minimum impairment award is $689 and the maximum is $138,073 ($218,020 for catastrophically injured claimants).

Rehabilitation benefits help claimants resume the jobs and lifestyles they had prior to their accidents, as much as possible. Depending on the circumstances, MPI might fund vocational re-training, modifications to a home or vehicle to assist with accessibility needs, or other expenses to help claimants with return to normal life and reintegration into society.

Death payments cover:

- Funeral expenses (to a maximum of $7,527 in 2011/12)
- Grief counselling for family members (to a maximum of $2,500 per person)
- A spousal payment tied to the deceased's gross annual income and age (in 2011/12, the minimum was $55,231 and the maximum was $415,000)
- Payments for children under 18 tied to their age (ranging from $26,234 to $48,327 in 2011/12)
- An additional amount for disabled dependants ($24,163 in 2011/12)
- Where the deceased has no dependants, payments to their parents and any non-dependent children ($12,299 each in 2011/12).

Caregiver benefits compensate those who, because of their injuries, are unable to continue their main (albeit unpaid) jobs of caring for dependent children. In 2011/12, weekly amounts range from $400 for 1 dependent to $524 for 4 or more dependents.

Student and minor lump sum indemnities (missed school benefits) compensate students and minors for notional economic losses caused by missed school terms or failure to complete the regular curriculum as a result of their injuries. Maximum annual amounts in 2011/12 are $4,695 for students up to grade 8, $8,698 for students in grades 9-12; and $17,399 for post-secondary students.

Retirement income benefits provide claimants who have received income replacement benefits for at least 5 years and are over 65 years of age with retirement income. Retirement benefits cannot start before claimants are 65 years old and are equal to 70% of their pre-accident net income less any net pension income they receive.

PIPP service delivery

The PIPP program is delivered through offices located in Winnipeg, Arborg, Beausejour, Brandon, Dauphin, Portage la Prairie, Selkirk, Steinbach, Swan River, The Pas, Thompson, and Winkler. Services for claimants with whiplash or other minor injuries are centralized in Winnipeg.

Claimants are assigned to case management groups based on the severity of their injuries and their physical locations. This allows more experienced case managers to handle the longer-term, more complex and catastrophic claims, which often require a higher level of sensitivity and professional judgement.

As of February 2011, the PIPP program had 87 case managers, who typically had caseloads ranging from 50 to 60, and 16 case management coordinators. There were also about 15 management and supervisory staff, 10 staff responsible for all minor claims (those with no loss of income and only medical expenses), 10 staff in the electronic records unit, 4 analysts, 8 staff specialized in calculating income replacement benefits, and 18 staff responsible for processing all other PIPP payments.

The PIPP program also has healthcare services personnel. These individuals provide case managers with medical opinions based on their review of medical reports and other file documentation, although they do not physically examine claimants. As of February 2011, healthcare services personnel included 2 chiropractors, 7 medical doctors with a background in sports or family medicine, a psychologist, a physiotherapist, a dentist, a musculoskeletal doctor, and a traumatic brain injury specialist (all employed on a contract basis), as well as a staff occupational therapist.

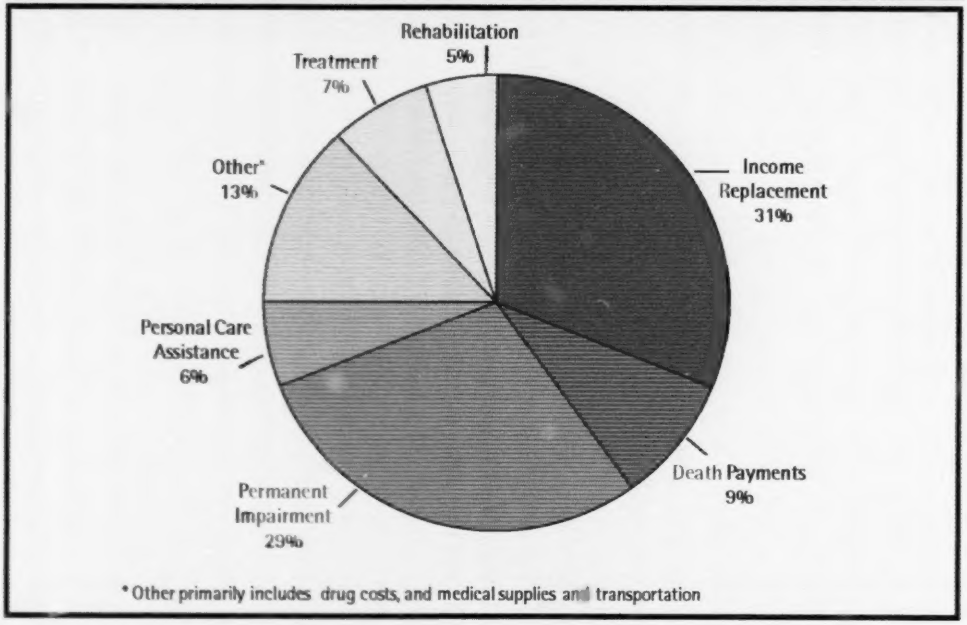
The PIPP program is also supported by staff in MPI's legal, special investigations, finance, enterprise systems, human resources, knowledge management, information technology, premises, and product and policy management departments.

PIPP statistics and costs

MPI receives an average of 16,000-17,000 new PIPP claims each year and had about 17,000 open PIPP claims as of February 28, 2011. Where claim costs were incurred, individual claim costs varied, ranging from a few dollars to over $1 million. Most were minor soft tissue and whiplash injuries. But about 20% were more serious injuries, and these accounted for approximately 80% of the PIPP program's annual paid costs of $100 million.

As shown in **Figure 1**, income replacement and permanent impairment benefits accounted for 60% of the paid costs for 2010 and income replacement was the most expensive individual benefit, accounting for 31% of paid costs.

Figure 1: Income replacement and permanent impairment benefits accounted for 60% of PIPP's 2010 paid costs



* Other primarily includes drug costs, and medical supplies and transportation

Source: Manitoba Public Insurance

As of February 28, 2011, MPI calculated that just over $1.978 billion was required for its future cost obligations on all existing PIPP claims. MPI sets aside funds, and the investment income earned on those funds, to help cover the future costs of present-day PIPP claims.

Audit approach

Audit objectives

We examined MPI's systems and practices for:

- Determining PIPP benefit eligibility and benefit entitlements, including processes for:
  - defining and publicly communicating benefits and eligibility rules
  - identifying and paying all benefit entitlements to claimants promptly
  - verifying benefit entitlements before payment
  - ensuring consistent decision making
  - documenting and communicating decisions
  - preventing and detecting program abuse
  - appealing claim decisions
- Calculating PIPP benefits, including processes for:
  - ensuring accurate calculation of initial and on-going benefits
  - reviewing and updating benefits and rates
- Managing the rehabilitation of PIPP claimants, including processes for:
  - planning, coordinating and monitoring medical and vocational rehabilitation and reintegration into society
  - procuring rehabilitation goods and services for claimants
  - ensuring case managers were properly qualified, trained and supervised
- Monitoring and reporting PIPP financial and operational performance information.

Audit scope

We conducted our audit between June 2009 and May 2011 and examined primarily the systems and practices in place up to February 28, 2010. Our audit was performed in accordance with the value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

The audit included review and analysis of applicable legislation, policies and practices; PIPP claim files, records, reports and other related documents; and information on similar accident insurance programs in Manitoba and selected other jurisdictions. We also interviewed staff from the PIPP program, various stakeholder organizations, and from a similar accident insurance organization. We focused our audit on the longer-term, more complex claim files that accounted for the majority of PIPP costs, selecting a sample of 50 PIPP claim files open at February 28, 2009 (with a variety of accident dates since program inception in 1994) for detailed examination.

During our audit, MPI was replacing the PIPP program's mostly paper-based claim files with electronic files and reorganizing staff responsibilities to better coordinate case management services and allow more experienced case managers to focus on the more challenging claim files. We did not examine claim processing after these changes.

We also did not examine MPI's reserves for the future costs of existing PIPP claims. These are reviewed annually by MPI's internal and external actuaries and financial statement auditor.

Audit findings and recommendations

1. Determining benefit eligibility and benefit entitlements

1.1 Defining and communicating benefits and eligibility rules

1.1.1 Most benefits and rules clear; others evolving

The MPIC Act and regulations, together with the PIPP procedures manual, clearly defined the benefits and eligibility rules for the most commonly used PIPP benefits, such as income replacement, chiropractic and physiotherapy treatment, personal care assistance, and permanent impairment awards. These all had relatively straightforward eligibility rules.

Other benefits had less straightforward eligibility rules. These were reasonably well-defined, but still left room for professional judgement. For example, MPI provided vocational counselling and training benefits when it felt they would best meet a claimant's unique needs, after considering recommendations from the claimant's care providers and advice from its healthcare services department.

Benefits and rules under section 138 of the MPIC Act were less clearly defined. This section stated MPI was to take any measures it considered necessary or advisable to facilitate a claimant's return to a normal life or reintegration into society or the labour market. Eligible expenses for "return to a normal life" and "reintegration into society" were not defined in the regulations or the PIPP procedures manual. And there was no written guidance for when MPI should consider these types of expenses "necessary" or "advisable". We also found inconsistencies in MPI's funding of these expenses (discussed further in section 3.3.1). Senior PIPP officials told us that, until March 2011, they interpreted section 138 as reiterating benefits related to work and personal care assistance referenced elsewhere in the MPIC Act and regulations. After this date, they began drafting a policy that would use this section to provide funding to help seriously and catastrophically injured claimants participate in sports and recreational activities.

The definition of an eligible vehicular accident had been expanded in recent decisions by MPI's Corporate Coverage Committee (which provided benefit decisions for claims with unusual circumstances), the Automobile Injury Compensation Appeal Commission, and the Manitoba Court of Queens' Bench. Although these did not necessarily set precedents for future MPI decisions, they reflected the fact that the definition of the types of vehicular accidents entitling people to PIPP benefits was open to interpretation based on each claim's particular circumstances. Recent rulings had extended PIPP benefits to people injured:

- By an exploding propane stove in the back of a parked vehicle (Corporate Coverage Committee, guided by a previous ruling concerning a propane tank by the Automobile Injury Compensation Appeal Commission)
- By paintballs fired from a moving vehicle (Automobile Injury Compensation Appeal Commission)
- While driving a golf cart on a golf course (Court of Queen's Bench).

Without clearly defined PIPP benefits and rules, the risk that benefits will fail to be provided fairly and consistently increases.

> **Recommendation 1:** We recommend that MPI, together with the Manitoba government, clearly define eligible expenses for "return to normal life" and "reintegration into society", and the types of vehicular accidents that entitle injured people to PIPP benefits.

1.1.2 Adequate benefit information for most PIPP claimants, but additional information would be helpful for those with complex claims

MPI had developed a PIPP guide for claimants, available both as a hard-copy pamphlet and on MPI's website. The guide provided basic benefit information in easy-to-understand language, including information on allowable medical and personal expenses, income replacement benefits, personal care assistance benefits, caregiver expenses, permanent impairment awards, death-related payments, rehabilitation funding, and appeal processes. This met the needs of most PIPP claimants, particularly those with minor injuries and short-term claims.

But the PIPP guide was insufficiently complete for catastrophically injured claimants. For example, it did not provide any information on costs that might be reimbursable under section 138 of the Act for "reintegration into society" or "return to a normal life". MPI was developing a supplementary pamphlet for catastrophically injured claimants at the time of our audit.

The guide also did not explain the eligibility rules and benefits for vocational rehabilitation in sufficient detail. For example, it did not explain MPI's vocational rehabilitation hierarchy of services, when vocational retraining would typically be provided, or all the potential reimbursable costs. Senior PIPP officials told us they intended to rewrite the PIPP guide soon.

The MPIC Act and regulations were available to the public through 2 links on MPI's website to the Manitoba government website. But these links were hard to find, under "Related Links, Business Partners" and at the bottom of the "About Us" page.

MPI's procedures manual provided more detail about specific benefits, and related practices and protocols, than the MPIC Act, the regulations, or the PIPP guide. It was available on CD for $25, but this was not advertised on MPI's website, or in the PIPP guide, and case managers did not routinely tell claimants about it. Other organizations administering similar programs posted their policy manuals on their websites or provided website links to specific policies and procedures.

Our review of claim file notes showed that MPI case managers sometimes supplemented the printed and digital information publicly available to claimants with additional verbal information, but this was not consistently documented.

Without easy access to benefit information, claimants cannot tell if case managers have identified and offered all the benefits they are entitled to, or calculated those benefits correctly.

Recommendation 2: We recommend that MPI:

- Provide additional written benefit information tailored for catastrophically injured claimants and claimants requiring vocational rehabilitation
- Post the PIPP procedures manual on its website.

1.2 Timeliness in identifying and paying benefit entitlements

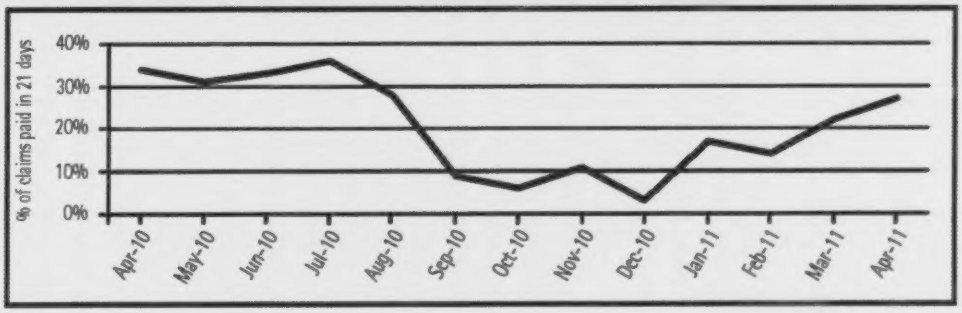
1.2.1 Time to pay first income replacement benefits improving, but target not yet met

In 2009, MPI set a target of paying claimants' first income replacement benefits within 21 days of their accidents. The target reflected the 7-day waiting period in PIPP legislation and recognized most people receive a paycheque every 14 days. Without timely income replacement benefits, claimants may suffer undue financial hardship.

MPI used to require written confirmation of a claimant's income from their employer before it paid any income replacement benefits. This led to some claimants waiting a long time for payment. To pay sooner, MPI began accepting an employer's verbal confirmation or a claimant's pay stubs for the first payment, and making any necessary adjustments when it received the employer forms. MPI case managers also visited severely injured claimants in the hospital to offer quick access to benefits. These changes helped reduce the time to first payment of income replacement benefits. Improvement was delayed by the introduction of a new claims system, but, more recently, the average time to first payment decreased from 56 days in October 2010 to 30 days in April 2011.

But it can still be faster. As **Figure 2** shows, MPI was meeting its target less than 40% of the time. We felt it was reasonable to expect MPI to meet its target more often.

Figure 2: Initial income replacement benefits paid in 21 days less than 40% of the time



Source: Manitoba Public Insurance

Recommendation 3: We recommend that MPI improve its processes so that it meets its target of providing claimants with their first income replacement benefits within 21 days.

1.2.2 Some unduly delayed benefits, although many timely

Claimants require prompt medical and other benefits, as well as income replacement benefits. Delayed benefits are not just inconvenient; they may also result in delayed medical improvement and return to work, or further injury to a claimant.

In 50 files examined, MPI did not always promptly identify and pay all benefits that claimants were entitled to, although many were timely. Often, a new case manager or a supervisory review identified the benefit entitlements originally missed. Benefits that were not provided (or offered) to claimants promptly were:

- In 3 files, the annual wheelchair clothing allowance of $900 was not received when due: delays ranged from 5 months to 2 years
- In 1 file, approval for a requested new specialized mattress was delayed for 4 months
- In 1 file, approval and reimbursement of various physiotherapy sessions totalling $1,208 were delayed 4 months

- In 1 file, annual lump sum indemnities totalling $22,186 for 5 years of missed schooling were delayed for 4.5 years, 3.5 years, 2.5 years, 1.5 years and 6 months respectively
- In 1 file, payment of a permanent impairment award of $8,300 was delayed for 3 years after the award was calculated
- In 1 file, the offer of critical care wage loss benefits totalling $130 was delayed 10 months
- In 14 files, indexing of on-going income replacement benefits were delayed for periods ranging from 4 weeks to 7 years, with resulting retroactive payments ranging from $25 to $8,700. Most delays occurred early in PIPP's history; only 3 of the 14 occurred in the past 5 years
- In 6 files, the 180 day review and adjustment of income replacement benefits for temporary or part time wage earners was delayed for periods ranging from 2 to 9 months, but there were ultimately no significant adjustments to benefits.

During our audit, MPI began replacing its primarily paper-based claim files with electronic files, restructuring to provide better coordination of case management services, and promoting the need to prepare adequately detailed claimant rehabilitation plans. These changes should help MPI be more diligent in ensuring benefits are provided promptly. Increased training and supervision, electronic reminders, and checklists may also help.

> **Recommendation 4:** We recommend that MPI use training, supervision, electronic reminders, checklists or other similar mechanisms to ensure all benefits are identified and paid promptly.

1.3 Benefit entitlement verification and decision-making

1.3.1 Benefit eligibility verified, but eligibility rules waived in certain cases

General eligibility for the PIPP program required proof of a vehicle accident, bodily injury as a result of the accident, and Manitoba residency or Manitoba registered vehicles. Non-residents in vehicles not registered in Manitoba were eligible for the PIPP program if a Manitoba driver was involved and at least partly at fault. Initial eligibility for specific PIPP benefits required appropriate supporting documentation before the benefits were approved and paid.

In 50 files examined, MPI staff always properly verified general PIPP eligibility by investigating the accident circumstances and obtaining:

- Copies of police accident reports and witness statements
- Medical reports
- Vehicle registration records
- A copy of the claimant's driver's license, health card, or tax return (depending on the circumstances) as proof of residency.

We also found that staff properly verified eligibility for specific benefits, by obtaining documents such as:

- Employer verification of earnings forms, job offer letters, pay stubs, and tax returns
- Medical practitioner assessments
- Birth, marriage and death certificates
- School registration and attendance records
- Proof of marital and dependency status
- Invoices, receipts, mileage records, and provision of personal care logs.

Although verification of benefit eligibility was generally well-handled, in 2 cases MPI provided claimants with benefits they were not entitled to receive. In 1 file, MPI paid an individual a dependent benefit of $24,793 although he did not meet the criteria of an adult dependent child. This was done "on a good will basis" because it had been promised to the claimant in error. In another file, MPI paid for 2 weeks of house cleaning totalling $820 on a one-time exception basis, even though the claimant did not qualify for any assistance based on MPI's personal care assistance grid.

1.3.2 Most decisions to deny or end benefits adequately supported

A decision by MPI to deny or end benefits may be contentious if a claimant feels that MPI's evidence inadequately supports this decision. Therefore, all such decisions need to be defensible and well-supported.

We examined 60 claims and found that:

- All decisions to deny or end personal care assistance benefits were based on recently assessed personal care assistance grids completed by external occupational therapists
- All initial denials of income replacement benefits were properly supported by evidence that the claimant was unemployed or otherwise ineligible at the time of the accident
- Most decisions to end income replacement benefits were properly supported and had supervisory approval, as MPI policy required.

In 3 cases, the supporting evidence for ending income replacement benefits was ambiguous. MPI case managers used their professional judgement to weigh contradictory and ambiguous evidence. It may not always be possible to resolve all contradictions and ambiguities in the available evidence, although best efforts to do so should occur.

We also reviewed a sample of 10 denied PIPP applications and found that all were properly supported by police reports, claimant statements, witness statements, and medical reports.

1.3.3 Inconsistencies in offering or providing certain benefits

Each claim is unique and many PIPP benefit decisions require use of professional judgement. However, claimants with similar needs should be offered and provided similar benefits.

Within 50 claim files examined, we found inconsistencies in benefits for home renovation costs, exercise equipment, grief counselling, personal care assistance expenses, and the interest paid on late benefit payments. These are described in further detail below. At the time of our audit, MPI had not developed guidelines to help case managers apply professional judgement in assessing requests for these types of benefits. Nor had it developed guidelines to help them decide when to proactively offer these benefits.

Home renovations

Paraplegic and quadriplegic claimants often required home renovations to improve home accessibility and safety. Common renovations included installing ramps, replacing carpeting with flooring more suitable for wheelchair use, widening doorways, lowering countertops, installing more accessible appliances, and adding grab bars to baths and showers. All home renovations were approved by MPI's Home Renovations Committee, comprised of senior PIPP officials.

At the time of our audit, MPI had a guideline that limited the funding for renovations to an existing home to 50% of the home's value, but the Committee did not follow this guideline consistently. It sometimes set the approved budget for these renovations at more than this 50% guideline and also sometimes allowed actual costs greater than the approved budget (up to 293% of the home's value).

When claimants built new homes, MPI's policy at the time of our audit was to pay any incremental costs for needs related to the accident. But this was not applied consistently. Incremental costs funded for similarly injured claimants varied by over $300,000, partly because of differences in the additional square footage and number of special items allowed.

MPI's policy allowed payment for renovations to only 1 residence, but in 2 cases where claimants with already-renovated homes chose to move, MPI funded renovations to the second homes.

Linking reimbursable renovations to the market value of a claimant's home potentially allowed claimants with homes of a higher market value to use higher quality materials in their renovations.

After the period covered by our audit, MPI developed a new home adaptation policy. This policy set out more detailed and specific inclusions and exclusions, and made funding available for a second residence required by a life change. The policy stated that adaptations were to be the most appropriate and cost effective and that funding would cover the purchase of standard quality construction materials. It was unclear if this policy would increase consistency as it still left room for discretion in assessing what would be most appropriate and standard quality.

Exercise equipment

Claimants were often prescribed exercise equipment to improve and maintain their physical condition. MPI was inconsistent in approving funding for home gyms for paraplegic claimants. It approved a home gym for 1 paraplegic claimant, but would fund only free weights and stretching bands for 2 other similar paraplegic claimants who had also requested home gyms based on their doctors' recommendations. MPI was also inconsistent in approving gym balls and gym memberships for less severely injured claimants.

The inconsistencies in the case managers' decisions reflected inconsistencies in the medical opinions from MPI's healthcare services staff on whether they agreed with the claimants' own healthcare providers that the requested equipment was "medically required". The healthcare services department subsequently developed an organization-wide protocol to help produce more consistent decision-making.

Grief counselling

Family members might require grief counselling to deal with a claimant's death. MPI policy required case managers to offer grief counselling to family members when a fatality occurred, but in 4 out of 10 fatality cases examined there was no evidence that this occurred.

Personal care assistance

MPI policy allowed personal care assistance to be provided by either external service providers or family members. Family members were paid minimum wage; external care providers were paid higher market rates.

MPI sent 2 separate personal care assistance letters to claimants: 1 set a dollar limit; the other set an hour limit. When a family member was providing the personal care assistance, some MPI case managers paid expenses exceeding the budgeted hours, but not the dollar budget, recognizing that a family member might take a bit longer to provide care than an external service provider. Other case managers did not allow the budgeted hours to be exceeded in similar circumstances.

Interest on late benefit payments

The MPIC Act states interest is to be calculated on benefits not paid by MPI within 30 days of the day "entitlement to the benefit is determined". In cases where MPI failed to identify benefit entitlements promptly, some case managers applied interest from the date MPI first should have determined the benefit entitlement; others did not. We noted 10 cases where interest was not calculated on late payments for a variety of different overdue benefits (the annual clothing allowance, a permanent impairment award, annual indexations, and lump-sum indemnity payments). The unpaid interest ranged from $2 to $573.

> **Recommendation 5:** We recommend that MPI improve its consistency in offering and providing benefits for:
>
> - Home renovations
> - Exercise equipment
> - Grief counselling
> - Expenses exceeding the budgeted hours, but not the dollar budget, for personal care assistance
> - Interest on late benefit payments.

1.3.4 Decision letters usually issued, but not always adequate

MPI policy required case managers to send letters to claimants every time they made a decision affecting benefits. Official decision letters clearly explaining all decisions in easily understandable language are important. They help claimants understand benefit decisions and claimants cannot appeal a decision without a written decision letter.

In the files examined, case managers always sent decision letters when ending on-going benefits. But in 5 instances case managers verbally refused initial benefit requests and did not issue decision letters.

Letters explaining how income replacement benefits were calculated were written in easily understandable language and provided sufficient explanation for claimants to assess if their benefits were reasonably accurate.

Letters explaining that benefits were being denied or terminated clearly stated the sections of the MPIC Act or regulations supporting the decision. But sometimes the MPIC Act and regulations were broad enough to require the exercise of the case manager's professional judgement. In these cases, the stated reasons for decisions were not always sufficient or used overly technical or legalistic language.

Letters explaining impairment awards detailed the assessed percentage impairment for each body system and part. Many of these letters were hard to understand because of the technical language used to explain the calculations and the complexity of the calculations themselves. Because the calculations were complex, case managers typically presented and explained impairment awards in face-to-face meetings with claimants.

Case managers were not always using consistent templates for standard letters. Senior PIPP officials anticipated more standardized letters once MPI completed implementation of its new claims management system.

> **Recommendation 6:** We recommend that MPI send decision letters for all benefit decisions, adequately explaining reasons for decisions in plain language.

1.4 Preventing and detecting program abuse

There is always a risk that claimants may abuse the PIPP program, either by misrepresenting their injury or failing to report all sources of earnings that would reduce benefits. Similarly, there is a risk that service providers may bill for services not provided or over-service claimants. As this may be costly and affect stakeholder's perceptions about program integrity, MPI required processes to minimize these risks.

1.4.1 Processes to prevent and detect program abuse adequate

MPI's special investigations department had 5 investigators to deal with potential PIPP abuse (other investigators focused on issues related to vehicle damage). Investigators arranged surveillance, but the actual surveillance work was done by private surveillance companies. Investigators also trained case managers on common indicators of abuse. A full-time Crown Attorney was assigned to the department.

Potential claimant program abuse was usually identified by case managers. MPI also had a tip line and website links for citizens to report potential program abuse. And MPI regularly reviewed tax information to ensure that employment and retirement income amounts claimants reported to the Canada Revenue Agency matched what they reported to MPI for calculation of their PIPP benefits, as further described in section 2.1.4.

Potential service provider abuse was typically identified by MPI's healthcare services department. The department's manager analyzed service provider data and looked for any providers billing for more or higher-cost treatments than expected. MPI also relied on claimants' reviews of the quarterly benefit statements sent to them to flag potential service provider problems. MPI expected the new electronic claim files being implemented at the time of our audit to track more data, allowing more detailed service provider reports to be generated for review.

In 50 files examined, 4 were referred by case managers to the special investigations department. This was always done promptly if there was any indication that investigation was warranted. We found no indications of program abuse in the other files.

When the special investigations department found that program abuse had occurred, it sent the findings and evidence to the Fraud Advisory Committee, which consisted of the director of bodily injury claims, and representatives from the collections and legal departments. The Committee reviewed evidence and decided if claims should be terminated and the Crown Attorney asked to lay criminal charges.

We examined 10 files handled by the special investigations department and found that in all cases:

- There was adequate initial evidence that the files warranted investigation
- The investigations supported the decisions made by MPI staff
- When investigations established that overpayments had occurred, MPI took steps to recover the overpayments by reducing any on-going benefits, garnisheeing wages, obtaining liens on property, withholding permanent impairment awards, or negotiating repayment terms.

The special investigations department typically had about 200 cases pending at any time. In 2010, the department:

- Found 85 referrals had no evidence of program abuse
- Found 18 referrals had evidence of program abuse
- Prosecuted 4 cases.

The dollar value of PIPP overpayments established during 2010 as a result of work done by the department was $25,600. And the department estimated the future cost savings from PIPP claims terminated in 2010 was $3,685,900, based on the amount of cancelled reserves.

MPI did not have any data comparison processes in place, such as information matching with Vital Statistics, to ensure that deceased claimants did not continue to receive on-going income replacement or retirement benefits. Instead, it relied on its regular review of income tax returns and newspaper obituaries, and periodic contact with claimants. Tape matching with Vital Statistics and other funders (such as the Canada Pension Plan) may provide additional assurance that on-going income replacement and retirement income benefits are appropriate and calculated correctly.

1.5 Appeals processes

1.5.1 Appeals processes in place, but unresolved and unheard appeals need further attention

Claimants may feel their case manager has made a wrong decision. An appeal process helps ensure that decisions can be reviewed for correctness and that all relevant facts have been appropriately considered and weighed.

All PIPP decision letters sent to claimants explained MPI's appeal processes and the claimant's right to appeal. The informal appeal level is to the case manager. After that, the first formal appeal is to MPI's Internal Review Office (IRO) and the next is to the Automobile Injury Compensation Appeal Commission (AICAC), which is an independent specialist administrative tribunal established by the MPIC Act to hear appeals regarding entitlement to PIPP benefits. Both appellants and MPI can also request leave to appeal an AICAC decision to the Manitoba Court of Appeal, but this was relatively rare (only 12 requests had been granted since 1994).

The IRO is separate from the claims management area and is housed in MPI's legal services department. IRO review officers consist of both lawyers and former senior case managers. Appeals to the IRO have to be in writing and claimants have the option of meeting in person with IRO staff for a formal hearing. There are time limits on appeals: 60 days to appeal to the IRO after a case manager decision and 90 days to appeal to AICAC after an IRO decision. But claimants can ask for these limits to be waived.

During 2010, claimants appealed 739 or 1.2% of about 60,000 PIPP decisions made annually by case managers. On average, the IRO upheld approximately 75% of appeals over the last 5 years.

MPI reported that the IRO had the following customer service standards: appeals for income replacement benefits were to be heard within 28 days (achieved 52% of the time in 2010); all others within 53 days (achieved 91% of the time in 2010). And written decisions were due 21 days after the hearings (achieved 89% of the time in 2010).

AICAC holds formal hearings with both claimants and MPI legal staff present. Claimants can represent themselves or be represented by chosen representatives, most often lawyers or the Claimant Adviser Office (CAO), a body independent of both MPI and AICAC set up in 2005 to help claimants appealing IRO decisions to AICAC. AICAC's 2010/11 annual report stated appellants were successful (in whole or in part) in 27% of the appeals it heard.

In March 2011, there were 339 unresolved appeals at the CAO. At the same time, there were 386 appeals at AICAC where the appellant or the appellant's representatives had been provided the indexed files (the documentary evidence that the parties need to agree will be referred to at the hearing of the appeal), but the appeals had not been scheduled for a hearing or otherwise resolved. Reasons for unresolved and unheard appeals varied and included delays by the parties concerned in getting ready, as well as the time needed to determine and gather relevant information, particularly medical reports. AICAC initiated case conferences to try to expedite matters. The CAO often tried to solve the issue without an appeal.

In December 2010, the Manitoba government announced it would set up the Automobile Injury Mediation Office and give claimants the option of independent mediation, in addition to the traditional AICAC appeal process. The goal was to make appeals less adversarial and also help reduce the time required to resolve appeals.

Although MPI feels it has no direct control over the number of unresolved appeals at the CAO or the number of appeals not yet scheduled for hearing at AICAC, it can work with all concerned parties to help find ways to reduce these numbers. As an example, it actively participated in the creation of the Mediation Office.

> **Recommendation 7:** We recommend that MPI work with AICAC, the CAO, and the Mediation Office to assist in reducing the number of unresolved appeals at the CAO and appeals not yet scheduled for hearing at AICAC.

2. Calculating benefits

2.1 Benefit calculation accuracy

2.1.1 Benefits calculated accurately

The MPIC Act and regulations set out the rules for calculating benefits. Some of these rules were complex and, as a result, MPI had a separate calculation unit and staff specialized in particular types of calculations. As well, most calculations were reviewed by a supervisor.

We recalculated a sample of the benefits in 50 files. Calculations were based on the existing rules and supporting documentation in the files (such as pay stubs, tax returns, and personal care allowance grids completed by external occupational therapists). We reviewed tax deductions for reasonableness only.

We examined the calculation of 41 income replacement payments, 34 permanent impairment awards, 23 personal care allowances, 5 lump-sum indemnities for missed schooling, 10 fatality benefits, and 6 retirement income benefit payments. All amounts were calculated accurately.

2.1.2 Changes in personal circumstances affecting calculations identified, but not always promptly

All annual indexation letters sent to claimants told them to notify their case managers if any "changes in personal circumstances" occurred. This was to ensure on-going accuracy in income replacement and retirement income benefits. Delays in flagging these changes increase the risk that benefits are underpaid or overpaid.

In 50 files examined, claimants generally notified their case managers when they returned to work. However, other changes in personal circumstances were sometimes not promptly reported to MPI. These included changes in marital status, number of dependants, and wage levels, as well as receipt of CPP benefits. Case managers also sometimes failed to follow-up verbal information from claimants on changed personal circumstances, which delayed MPI follow-up until income tax returns were received for review. These situations led to both under- and over-payment errors, ranging from smaller dollar amounts up to $8,000.

MPI policy required regular contact with claimants. However, MPI did not regularly send notices to claimants asking them if their personal circumstances had changed. Nor did MPI give claimants information on the types of "changes in personal circumstances" that would affect their benefits. Other similar organizations reviewed regularly corresponded with claimants about changes in circumstances, providing a detailed checklist of the circumstances claimants should report.

> **Recommendation 8:** We recommend that MPI clearly and regularly communicate to claimants the types of changes in personal circumstances they must report, and promptly follow-up all written and verbal reports received.

2.1.3 Policy for waiving overpayments applied inconsistently

MPI's policy was to waive repayment of overpayments due to errors on its part. For example, when MPI mistakenly included a travel allowance in calculating a claimant's income replacement benefit, it waived the resulting overpayment. But it did not apply this policy consistently, as described below.

Overpayments were not waived in 2 cases where MPI did not act promptly on verbal information from claimants about changes in their personal circumstances. Letters to claimants telling them they had to report these changes did not specify that notification had to be in writing.

An overpayment was also not waived in 1 case where MPI failed to properly reduce income replacement benefits at the end of the claimant's job search year. MPI itself set the date the job search was to end and benefits be reduced.

> **Recommendation 9:** We recommend that MPI review and clarify its policy for waiving different types of overpayments to ensure it is logical and consistently applied.

2.1.4 Annual income tax reviews performed, but not always timely

MPI regularly obtained tax information to ensure that the employment and retirement income amounts claimants reported to the Canada Revenue Agency matched what they reported to MPI for calculation of their PIPP benefits. Each April (to coincide with income tax season), case managers requested copies of current tax returns from all on-going claimants who had been receiving income replacement or retirement income benefits at December 31 of the prior year.

It often took several months and repeated requests to obtain this information. As a result, tax reconciliations were often not timely and any resulting overpayments or underpayments were higher because of the delays. In 2 of the most extreme cases, tax information for 2007 was not obtained until 2009 and 2010. MPI suspended benefits until the tax information was supplied in the first case, but not the second, where there was an even greater delay.

Given the frequent delays in receiving tax information from claimants, it would likely be more efficient for MPI to have claimants authorize it to obtain this information directly from the Canada Revenue Agency.

> **Recommendation 10:** We recommend that MPI reduce the delays in tax reconciliations and benefit adjustments by having claimants authorize it to obtain their tax information directly from the Canada Revenue Agency.

2.2 Reviewing and updating benefits

MPI's product and policy management department was responsible for analyzing benefits to ensure they remained current, and periodically reviewing the need for benefit improvements. It also assessed any unintended impacts of existing benefit rules and prepared impact statements for significant legislative changes. Ideas and issues came from case managers, MPI management, AICAC and Court of Appeal rulings, customer focus groups, and government.

2.2.1 Most benefits annually indexed; no regular review of non-indexed benefits

Without processes to ensure that benefit rates remain reasonable and continue to compensate claimants as intended for their financial losses, benefits may be eroded by inflation.

Most PIPP benefits in the MPIC Act were indexed annually. MPI also annually updated the tax tables and the Statistics Canada earnings data used to calculate income replacement benefits.

All income replacement benefits, retirement income benefits, and permanent impairment awards examined were properly indexed to the annual change in the consumer price index. The maximum personal care assistance benefit was similarly indexed, but claimants receiving on-going personal care assistance payments less than the maximum did not receive any increase unless their personal care needs were re-assessed, which occurred only on an as-needed basis, typically once every 2 years for long-term claimants.

MPI did not regularly review non-indexed benefit rates. It left per-diem meal rates for claimants at 1994 levels until February 2011, when it increased the daily per diem for breakfast, lunch and dinner from $22.30 to $36.94, and instituted annual indexation of these rates.

At the time of our audit, an important rate not amended since 1994 was the $250 claimants were allowed for each of up to 3 medical reports independently obtained to assist with an appeal. MPI had no similar limit on the number of medical reports it could pay for to support its position. In addition, the Automobile Injury Compensation Appeal Commission and MPI's Internal Review Office could both request medical reports to be funded by MPI without any report or dollar limits. Our review found that a specialized medical exam report could cost over $1,200. While the $250 was not a large benefit and it affected a limited number of claimants, it was significant as the medical reports might be used to appeal decisions with much higher dollar values at stake. MPI created potential inequities by allowing claimants fewer medical reports and less funding than it allowed both itself and internal and external review bodies.

> **Recommendation 11:** We recommend that MPI regularly review all non-indexed benefits and ensure they remain reasonable and fair over time.

2.2.2 Challenges in setting certain benefits to reflect actual financial losses and needs

Some benefit rules could potentially create situations where individuals' actual financial losses or needs would be significantly under- or over-compensated. This may create inequities between claimants or provide unintended incentives to remain on benefits. As outlined below, we noted issues with the 180 day income determination for part-time and temporary workers, the determination of earnings for part-time seasonal workers, the retirement income benefit, and the personal care assistance benefit.

Part-time and temporary workers could receive more generous income replacement benefits than full-time earners could. For the first 180 days or until they return to work (whichever is sooner), part-time and temporary workers are compensated based on their actual earnings at the time of the accident. At 180 days, if they are still unable to work, their compensation is based on a determination of their potential annual income capacity, as demonstrated any time over the last 5 years. This could be higher than any actual annual income generated (for example, it could be based on 4 months of work done 4 years before the accident). For full-time earners, the compensation is determined by considering only actual earnings at the time of the accident.

Initial income replacement benefits could also under- or over-compensate part-time seasonal workers, depending on the timing of the accident. One claim we examined was for a part-time school bus driver usually employed 40 weeks in the year. MPI's determination of his lost earnings was correctly based on 52 weeks of employment, as the legislation requires income to be annualized based on the amount the claimant is receiving at the time of the accident. Any earnings seasonality (such as not being paid for Christmas and summer break) could not be factored into the initial calculation, and was only considered after 180 days.

The retirement income benefit is paid if claimants have received income replacement benefits for at least 5 years prior to retirement. It is calculated as 70% of pre-accident income less any actual net pension income. It is not pro-rated to recognize the proportion of pre-accident income that is recovered by claimants returning to work and therefore may not reflect their actual economic losses. It may also act as a potential disincentive for long-term claimants receiving small dollar value income replacement top-up benefits (that is, those who recover almost all of their pre-accidents incomes when they return to work) to set aside funds that will provide them with future pension income.

Claimants require a minimum of 45 minutes of daily care to receive any personal care assistance funding. Those who require only periodic help with yard work (snow removal/lawn care) do not meet this threshold. But the physical nature of these tasks means that claimants may aggravate their injuries if they do this work themselves, potentially increasing the length of their claim and their time receiving income replacement benefits.

MPI's product and policy development department regularly reviewed a variety of PIPP benefits. Most recently, this led to the enhancement of benefits for catastrophically injured workers. At the time of our audit, MPI had also reviewed various rules for determining income-related benefits, but chose not to further address any of the issues outlined above as they were not perceived to be significant. However, the review did not calculate likely future dollar impacts to assess significance more precisely. As well, MPI had not reviewed the 45 minutes/day minimum required to qualify for personal care assistance. MPI officials told us they needed to balance trade-offs between system precision and complexity.

> **Recommendation 12:** We recommend that MPI project the number of part-time, temporary, seasonal and retired claimants (including those currently receiving long-term income replacement top-up benefits who will eventually retire) that may obtain benefits in excess of their likely economic losses and estimate the future dollar impacts.

> **Recommendation 13:** We recommend that MPI compare the costs of compensating claimants who require only periodic help with snow removal and lawn care with the savings, risks, and injury-related costs resulting from not compensating these claimants.

3. Managing claimant rehabilitation

A key PIPP goal was to help claimants resume, as much as possible, their pre-accident activities. Based on discussion with a subject matter expert and review of rehabilitation practices in other similar organizations, this requires medical, vocational and social rehabilitation. Medical rehabilitation focuses on helping claimants reach maximum medical improvement; vocational rehabilitation focuses on returning them to work (for those able to return to some form of work); and social rehabilitation focuses on returning them to sports and other recreational and leisure activities matching their interests and abilities. The MPIC Act refers to returning claimants to normal life and reintegrating them into society, but does not specifically refer to "social rehabilitation".

3.1 Medical rehabilitation

3.1.1 Medical rehabilitation planning and monitoring limited

MPI policy required case managers to prepare and regularly update written rehabilitation plans. The policy did not further elaborate or set any standards for these plans. However, MPI sent many of its case managers to a university's case management certificate program, which considered medical rehabilitation planning an important component of the overall rehabilitation process.

Of 50 files examined, 36 had rehabilitation plans. Most files had only brief and generally worded long-term rehabilitation objectives, such as "return to same work with same employer" or "full function", with few accompanying details. MPI case managers did not typically identify short-term goals or milestones towards longer-term medical goals. Nor did they clearly identify the physical and cognitive demands of claimants' pre-accident jobs or their medical restrictions after their accidents.

Case managers typically monitored medical progress by requesting medical reports from claimants' external healthcare providers. These often stated claimants could not return to work, without further clarifying restrictions (for example, by describing weight-lifting restrictions).

Beginning in 2007, MPI policy required case managers to obtain monthly self-reported functional capacity assessments from all claimants receiving income replacement or personal care assistance benefits. These were missing in 8 of the 10 post-2007 claim files examined. MPI management advised that they were currently reviewing this policy and considering removing the requirement for monthly self-assessments.

Case managers appropriately monitored medical treatment and progress in most cases, but we observed 4 cases where this was not the case. In 1 case, a benefit was continued for a month longer than medically required. In 3 other cases, the case managers did not appropriately follow-up and investigate unusually lengthy treatment periods.

At the time of our audit, case managers did not have access to disability duration tables to help them monitor the reasonableness of claimants' medical progress, but duration tables were being built into MPI's new electronic case-management system. The tables show the average time it takes to recover from different types of injuries and provide guidelines for when case managers might need to investigate slower than expected medical progress.

Coordination with the Manitoba Home Care program varied between case managers. Some actively coordinated service delivery; others left it to the family to obtain and ensure that claimants' needs were met. As MPI did not fund the Home Care program, MPI officials felt there was no obligation to coordinate these services. Legislative changes in 2009 to improve benefits for catastrophically injured claimants included authorization for MPI to coordinate and facilitate access to funding or services provided by any level of government for these claimants.

We also noted that, at time of our audit, MPI was exploring more actively directing claimant medical care to better manage claimants' recovery and return-to-work.

Recommendation 14: We recommend that MPI:

- Prepare rehabilitation plans that clearly document claimants' medical restrictions and set timelines and milestones for reaching maximum medical improvement
- Regularly monitor and document medical progress so that benefits are promptly adjusted to reflect updated medical reports and follow-up investigation occurs when expected medical progress is not achieved.

3.1.2 Consultations with healthcare professionals generally appropriate

Case managers typically referred files to MPI's healthcare services department whenever it was appropriate to seek medical advice. For example, most case managers consulted with the department before extending funding for physiotherapy or chiropractic treatment beyond the agreed-to number of treatments pre-authorized through negotiation between MPI and the professional associations. Case managers also frequently consulted with the department to obtain advice as to whether or not the claimants' injuries were causally related to their motor vehicle accidents. However, in a limited number of cases, case managers referred unnecessary questions to the healthcare services department or failed to consult with the department when it seemed reasonable to do so.

As MPI healthcare services staff provided opinions without physically examining MPI claimants, case managers occasionally referred claimants to external medical examiners for independent medical examinations and opinions. In 3 of 6 cases examined where this occurred, the examiners were affiliated with organizations providing other services to MPI. We did not find any cases where an examiner provided both an independent medical exam and other MPI services to the same claimant. But we noted that MPI did not have any policies or processes to identify and manage such potential conflicts-of-interest, relying instead on the examiner's professional ethics.

Some members of MPI's healthcare services department also had external professional practices where they sometimes treated MPI patients. In 1 of the files examined, a member of the department excused himself from providing an opinion to MPI for a claimant he was treating in his external practice. MPI's contracts with its healthcare services staff had conflict-of-interest clauses that prohibited their involvement with claimants who had been patients. But they did not specifically prohibit other types of conflicts, such as involvement with friends, neighbours or relatives.

> **Recommendation 15:** We recommend that MPI include a conflict-of-interest clause (similar to the clause used in its contracts with its healthcare services staff) in its service agreements with external independent medical examiners, and that it expand these clauses to prohibit any involvement with a MPI file where there could be a potential conflict-of-interest with a patient, friend, neighbour, or relative.

3.2 Vocational rehabilitation

3.2.1 Evidence of vocational rehabilitation planning lacking

MPI's procedures manual set out the following general principle: *"The Corporation shall, in its sole discretion, and in consultation with the medical/rehabilitation team (both internal and external), provide assistance to injured parties in support of their efforts to return to the labour force".*

There were 18 files in our 50 file sample where claimants able to work were unable to return to the same type of work done before their accidents and required some form of vocational rehabilitation. Of these, 14 had rehabilitation plans. In most cases, MPI had out-sourced several elements of the vocational rehabilitation process to external service providers. We found that:

- Claimants did not sign rehabilitation plans as evidence of their buy-in
- Most files identified the claimant's educational background and had a formal assessment of the claimant's transferrable skills
- The majority of the files did not clearly identify the claimant's physical restrictions as a result of the accident in sufficient detail. For example, there were references to "no heavy lifting" or "only light duty work", without clarifying the number of lbs that the claimant could safely lift or a safe frequency of lifting
- Several files considered barriers to return-to-work (typically geographic location or the claimant's age)
- About half the files had evidence of interest and aptitude testing

- Slightly more than half the files had evidence that a labour market analysis had been conducted to assess the market demand for the new occupation being considered
- Few files had detailed comparisons of the claimant's attributes to the physical demands and other requirements of proposed new occupations.

Within the 18 files examined, the percentage of pre-accident earnings recovered ranged from 26% to 100%, with an average of 61% recovered. Given the small sample size, this recovery rate may not be representative of the total population. As noted in section 4.1.1, MPI does not track return-to-work outcomes for claimants receiving vocational assistance and does not know the proportion and results of off-work claims that remain active because claimants have not been able to fully recover their pre-accident incomes. Where plans in the files examined were not going to recover 100% of the claimant's pre-accident income, there was no cost/benefit analysis documented to determine if additional training might increase the percentage recovery.

MPI's new claims system has a rehabilitation planning tool that MPI believes will help improve rehabilitation planning.

> **Recommendation 16:** We recommend that MPI prepare vocational rehabilitation plans for all claimants able to work but unable to return to the same type of work done before the accident, and that the plans include:
>
> - Comparison of the claimant's functional capacity, interests and aptitudes, educational background, and existing transferable skills to the physical demands and other requirements of the proposed new vocation
> - Analysis of the labour market demand for the proposed new vocation
> - Calculation of the future financial implications and analysis as to whether funding additional training might recover more of the pre-accident wage
> - Identification of existing barriers to success and proposed mitigation strategies
> - Evidence of claimant buy-in.

3.2.2 Determinations of post-accident earning capacities not well-supported

As part of the vocation rehabilitation planning process, MPI established a Residual Capacity Determination (RCD) for claimants capable of work, but unable to return to their pre-accident work. The RCD was the post-accident income that MPI expected claimants to earn once they reached their vocational goal and began working at their new occupation (following the year allowed in legislation for job search activity). Case managers used National Occupation Code information compiled by Statistics Canada to determine the expected income level for different occupations. MPI did not set any RCD for catastrophically injured claimants, although it made re-training and re-education available to them, if desired.

We expected case managers to adequately demonstrate that claimants could perform and acquire their "determined" jobs. However, given the issues noted in section 3.2.1, the majority of RCDs in the files examined were not well-supported.

Most of the RCDs in the files examined were set before November 2009, when PIPP's senior management team began reviewing and approving all RCDs. As part of this new process, case managers prepared internal memos supporting RCDs that were discussed with the senior management team.

We reviewed 4 RCD memos and found that they generally provided more support for the RCDs than we had observed as part of our file review. However, there was room for improvement. Some case managers listed detailed physical restrictions (such as no lifting greater than 7 lbs. above shoulder level); others merely stated "no heavy lifting". Similarly, some provided a detailed description of the physical demands of the determined occupation; others only a general description. And some randomly called 3 employers to determine if they were currently hiring or planning any future hiring in the determined occupation; others more credibly demonstrated labour market conditions by providing Service Canada or Manitoba Job Futures data on the employments prospects for the occupations. The verbal discussions with the senior management team likely provided additional information, but the discussions were not documented.

All the RCD memos showed the biweekly income replacement benefit before and after the recommended RCD, as well as the biweekly retirement benefit expected in the future. They did not calculate the total future financial implications of the chosen RCD, or present any alternative RCD choices.

> **Recommendation 17:** We recommend that MPI support all residual capacity determinations with documentation clearly demonstrating that the claimant's attributes match the physical, educational and other requirements of the determined occupation, and that there is a sufficient market demand to reasonably expect the claimant to be able to acquire a job in that occupation.

3.3 Social rehabilitation (reintegration into society)

3.3.1 Reintegration benefits provided inconsistently and in development stage

As section 1.1.1 noted, section 138 of the MPIC Act makes MPI responsible for facilitating a claimant's "return to normal life" and "reintegration into society". But at the time of our audit, MPI was only just starting to develop a policy that would interpret this responsibility as providing funding to help seriously injured claimants continue to participate in sports and recreational activities.

We found very little planning for reintegration into society in the 14 catastrophic injury claims that were part of our larger sample of 50 files. This likely reflected MPI's stated past interpretation of section 138 reintegration benefits (that these were benefits related to work and personal care assistance referenced elsewhere in the MPIC Act and regulations, as described in section 1.1.1).

Case managers sometimes provided reintegration benefits, such as funding to help claimants attend recreational activities, but this was not done consistently. Those claimants who received these reintegration benefits typically needed to advocate for them; they were not proactively offered by MPI. This was inconsistent with section 150 of the MPIC Act, which states *"The Corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part".*

Other similar organizations reviewed paid a variety of expenses intended to help claimants with reintegration into society and return to normal life, such as funding for attendants to accompany claimants to community or group activities. Some also had a variety of benefits to support the families of the catastrophically injured, which indirectly supported return to as normal a life as possible for claimants. This included funding for respite services and psychological counselling for family members.

As recommended in section 1.1.1, MPI needs to clearly define eligible expenses for "return to normal life" and "reintegration into society". Case managers can then include these expenses in the rehabilitation plans they develop for claimants.

3. 4 Procuring rehabilitation goods and services for claimants

3.4.1 Some cost-effective procurement practices, but further savings possible

As described below, MPI had some practices to ensure that rehabilitation goods and services were procured cost-effectively. This meant selecting goods and services of the desired quality at the lowest cost within the desired timeframe.

Claimants had to obtain at least 3 bids and quotes for home renovations. This occurred in all files examined, except for 1 where fewer quotes were accepted based on the lack of qualified contractors in the rural location, which was reasonable.

MPI negotiated fee schedules with physiotherapists, athletic therapists, and chiropractors. This set prices and also capped the number of treatments initially allowed for most types of treatment.

Case managers tended to refer claimants to some suppliers on a preferred basis, based on their individual experiences with the suppliers. These informal arrangements were often used to buy medical assistance devices, medical supplies, and transportation services. And MPI's external service providers (such as occupational therapists) often made recommendations to MPI and claimants on where to buy wheelchairs, orthotic devices, exercise equipment, and medical supplies. These case manager and external service provider referrals were not based on any formal analysis of vendors' products, services, timeliness, or costs and available discounts.

Both case managers and external service providers sometimes obtained quotes for larger items, such as wheelchairs. They also sometimes obtained supplier discounts on individual purchases of medical devices and supplies, although the discounts were not arranged on a corporate-wide basis.

MPI did not have an official list of preferred suppliers selected through a competitive process as it wanted to maintain claimant choice of vendor. Additionally, as the MPIC Act and regulations refer to "reimbursing" claimants for these types of expenses, MPI officials viewed MPI's direct payments to vendors as billing arrangements for processing efficiency and customer service and did not want to further develop or maintain any MPI/vendor relationships.

MPI outsourced many aspects of the vocational rehabilitation process, rather than employing its own occupational therapists or vocational rehabilitation counsellors. Some external service providers charged significant hourly rates: one vocational rehabilitation firm charged $85/hour, equivalent to about $175,000 annually for a full-time staff person. MPI officials said they preferred outsourcing these services because they felt claimants would view external service providers as more independent and fair than MPI staff.

MPI did not directly pay for claimant visits to doctors' offices or hospital stays. Instead, it had an agreement to pay Manitoba Health for these services using a negotiated formula based on the number of registered vehicles. MPI did not have any recent analysis comparing actual to negotiated costs for these services, but MPI officials felt the formula was cost-effective. In 2010, it paid $20.5 million to

Manitoba Health for services received by its claimants under Manitoba's *Health Services Insurance Act*.

> **Recommendation 18:** We recommend that MPI ensure that vendor recommendations made to claimants are based on analysis of vendors' products, services, timeliness, costs and available discounts.

> **Recommendation 19:** We recommend that MPI compare the costs and benefits of out-sourcing vocational rehabilitation services with the costs and benefits of employing its own vocational rehabilitation staff.

3.4.2 Accountability framework for external service providers insufficient

Accountability frameworks for external service providers help to clearly define their roles and responsibilities, and their reporting requirements.

In the sample of 50 claim files reviewed, there was often no evidence that MPI case managers had:

- Established the content, format, and timing of accountability information to be provided by external service providers
- Specified start and end dates for engagements
- Clarified whether or not the external service providers were to function as case coordinators
- Monitored the external service providers appropriately.

MPI policy required case managers to use a "request for services" letter to hire external service providers, but this was not done consistently. The letters focused on payment issues—not accountability.

> **Recommendation 20:** We recommend that MPI use "request for services" letters consistently and that the letters clearly state reporting requirements, engagement start and end dates, and case coordination expectations.

3.5 Case manager qualifications, training and supervision

Given a case manager's critical role in delivering PIPP benefits and facilitating claimant rehabilitation, MPI required processes to ensure that all case managers had adequate qualifications, received appropriate training, and were properly supervised.

3.5.1 Case managers had related training and experience

At the time of our audit, entry-level case managers needed at least 2 years of post-secondary education in social sciences or administration and 3 years of relevant technical experience, or an equivalent combination of education and experience. In practice, they often had previous experience administering benefits for minor PIPP claims, and at least 6 course credits from any approved insurance, case management or management studies certificate program, or MPI's in-house supervisory development course.

Senior case managers needed at least 3 years of case manager experience and 8 course credits from the options noted above, or equivalent experience and training.

Supervisors needed at least 4 years of case manager experience, with at least 1 year of supervisory experience and the same education requirements of a senior case manager as noted above, or equivalent experience and training.

We reviewed the qualifications of 3 entry-level and 7 senior case managers and found they fully met the requirements of their positions.

At the time of our audit, MPI was re-structuring staff positions and setting higher educational and experience requirements for many restructured positions.

3.5.2 Number and depth of supervisory file reviews require improvement

MPI supervisors told us that each PIPP claim file was to be reviewed twice a year, but they were able to review only the complex claim files, and only once a year. Less complex claim files would generally be closed within a year.

Supervisory file reviews were kept in case manager personnel files. We reviewed the supervisory reviews in 10 of these files. On average, each file had only 10-12 case file reviews per year, although case manager caseloads averaged about 50 files. Supervisors told us they didn't keep file review documentation, unless the review was done for a performance appraisal.

Supervisors documented their claim files reviews by rating case management performance in 22 different areas as either satisfactory or requiring change. The different areas included case management, rehabilitation planning, claimant contact, decision letters, file documentation, and use of external service providers. Supervisors did not have checklists describing key elements of satisfactory performance in the different categories to help guide their file reviews.

We compared the results of the supervisory reviews with the results of file reviews by MPI's quality assurance department over the last 3 years and our own file reviews. Both the quality assurance and our own reviews found more areas requiring significant improvement than noted in the supervisory reviews.

Recommendation 21: We recommend that MPI ensure that supervisors:

- Comply with its claim file review requirements
- Document support for all performance ratings.

3.5.3 Case management and other training provided, but results of file reviews not used to identify training needs

Recognizing the need for case management training when the PIPP program was introduced, MPI worked with a university to help develop the university's case management certificate program. It also paid for employees to attend this program. As at June 2010, 155 employees had graduated from the program and 106 had taken classes in the program but not yet graduated.

MPI also offered internal training. It had developed a course on PIPP legislation that was offered periodically (4 times between 2009 and 2011) for all new PIPP staff. And, during 2010, it offered 110 individual and group training sessions on its new electronic case management system and planned case management team re-structuring. As well, special investigations department staff delivered periodic presentations on investigation topics and healthcare staff delivered biweekly presentations on medical topics (although this was reduced in 2010 to allow greater focus on training for the new electronic claims system).

Internally developed courses were based on general perceptions about what would be relevant. File reviews by MPI's quality assurance department indicated a need for more training in developing and managing rehabilitation plans, but MPI did not use the results of these reviews or the supervisory file reviews to identify training needs.

Senior PIPP officials told us that case managers were expected to have education and self development plans. We examined 10 personnel files and found 7 had these plans. The education and self development plans were not linked to the results of the quality assurance or supervisory file reviews.

Recommendation 22: We recommend that MPI use the results of supervisory and quality assurance reviews to help identify corporate and individual training needs.

4. Performance information

4.1 Performance information for internal management purposes

4.1.1 Some claims management information available; additional data being developed.

MPI produced a variety of management information for PIPP claims, including:

- Caseload statistics
- Call handling times
- Days to first income replacement payment statistics, including time from date of accident and time from receipt of required information
- Claim payment totals, including sorts by vendor and expense categories
- Reimbursement times for vendor payments and claimant-paid expenses
- Special investigations statistics and results
- Appeal statistics and results
- Results of customer satisfaction surveys
- Number of requests for income replacement calculations, average calculations per day, and average calculation time.

Important performance measures had related targets. The target for days to first income replacement payment was discussed in detail in section 1.2.1 and the target for customer satisfaction is discussed in section 4.2.1. In addition, MPI reported that calls were to be picked up within 20 seconds during business hours (achieved 80% of the time in 2010), claimant payments were to be processed within 5 working days of receiving documentation (achieved 72% of the time in 2010), and vendors were to be paid within 30 days (achieved 92% of the time in 2010).

Customers surveyed were only those who had opened claims in the last 6 months, excluding catastrophically injured claimants and survivors of fatally injured claimants for sensitivity reasons. This meant that while MPI was gathering information from a group representative of the majority of its claimants (as most claims are settled within 6 months), it was not gathering sufficient information from the claimants accounting for most PIPP costs and case management time. It excluded those with the more complex, severe and long-term claims, plus those with permanent impairment awards, vocational rehabilitation plans, or residual capacity determinations. MPI officials told us that they intended to begin surveying catastrophically injured claimants soon.

Other similar organizations had additional types of claims management information, including:

- A case manager workload index that combined the number of cases assigned to a case manager with a rating of the case difficulty
- Claim duration statistics
- Return-to-work statistics.

MPI's new electronic claim file will help gather more information. MPI intended to begin tracking claim duration and to have more detailed claim financial information, but at the time of our audit it had not yet decided all the key indicators it would track.

Recommendation 23: We recommend that MPI augment its claims management information by:

- Including customers with complex and long-term claims in its customer surveys
- Measuring claim duration
- Tracking return-to-work outcomes for claimants receiving vocational rehabilitation assistance.

4.2 Public performance information

4.2.1 Limited public disclosure of PIPP performance information

MPI's annual report publicly disclosed a range of aggregate financial and operational performance information for the corporation overall, but information specific to the PIPP program was more limited (consistent with the approach taken for MPI's other lines of business, such as vehicle collision and driver and car licensing). The annual report included PIPP's customer satisfaction rating; the number of bodily injury claims for the year, in total and by injury type; and bodily injury claim costs for the year.

The PIPP customer service rating published in MPI's annual report was based on a question from MPI's semi-annual customer survey that asked claimants about their overall satisfaction with their bodily injury claims. The PIPP customer service rating in the 2010 annual report was 75%. This met the targeted customer service rating of 65-75%, set several years ago. But as section 4.1.1 noted, claimants with complex and long-term claims were not included in the survey.

We looked at the public information (annual reports and websites) of other similar insurers. Some disclosed additional information to what MPI was publicly disclosing, including:

- Special investigation and fraud statistics
- Average call handling times
- Days to first income replacement payment
- Claim duration
- Average costs by injury type
- Return-to-work statistics.

We encourage MPI to explore publicly disclosing additional performance measures for the PIPP program, such as these.

Response of officials and summary of recommendations

MPI is committed to working with Manitobans to reduce risk on the road. An integral component of this vision is to administer the Personal Injury Protection Plan (PIPP) governed by the MPIC Act since March 1, 1994. MPI has adopted a culture of constant review and change to continue to provide the most comprehensive coverage and service for Manitobans injured in a motor vehicle accident. MPI is appreciative of the efforts made by the OAG in auditing a sample of the longer term, more complex claim files opened between the start of PIPP in 1994 to 2009 with the intent of identifying opportunities to improve MPI's systems and practices of the PIPP service delivery model. The recommendations made in the report have been given serious consideration by Management and as reported below many were implemented during the course of the audit. While the OAG found that MPI properly verified eligibility for PIPP benefits before paying them and adequately supported most decisions to deny or end benefits, Management acknowledges that improvements need to be made in rehabilitation planning, supervisory reviews of claims and performance information. This was the impetus for introducing the Bodily Injury Improvement Initiative (BI^3) in September 2010, which is comprised of a new organization structure and a new claims management system providing tools for:

1. Enhancing the customer experience, accomplished through:
    - Streamlining processes for small, less serious claims to improve response and reimbursement timeframes for customers
    - Pre-authorization of health care goods and services to allow for improved response and reimbursement timeframes for 75%-80% of claims
    - Reducing transfers of customers' claims to different staff members to strengthen the relationships between claimants and staff through the introduction of the new bodily injury organizational structure
    - Proactively managing cases and maximizing claimants' medical improvement by ensuring Rehabilitation Plans are created on all more serious claims. This has resulted in a new case management philosophy that stresses the case manager as the "quarterback" of the rehabilitation team and working more proactively with all members of the claimants' recovery teams.
2. Enhancing Case Management Effectiveness, accomplished through:
    - Providing staff with tools such as disability duration guidelines and rehabilitation plans built on leading industry practices

- Incorporating tools built into the BI^3 application that provide case management consistency through the use of workflows, tasks, and reminders
- Allowing case managers time to focus on their core responsibilities of managing the case and focusing on the customer rather than managing paper.

3. Organizational and work allocation flexibility, accomplished through:
   - Introducing a paperless workflow to move work to people (our staff) versus people to work
   - An electronic file allows multiple users to complete various tasks on the same claim rather than needing to request a paper claim file to perform a task
   - Allowing case managers to access the electronic claim file when meeting with their client, their client's employer or health care provider outside of MPI office
   - Allowing tasks to be electronically assigned between internal departments and resources.
4. Risk Reduction, accomplished through:
   - Moving towards a paperless office to eliminate paper files that can be misplaced
   - Creating a single "source of truth" for claims files by eliminating multiple copies of paper files.
5. Improved ability to understand the business, accomplished through:
   - A robust database that allows the corporation to measure Key Performance Measures (KPMs) and the ability to perform internal and external data analysis, as well as global benchmarking to compare MPI's outcomes with other jurisdictions and countries.
6. Improved ability to understand treatment outcomes, accomplished through:
   - Collecting injury, treatment and service provider data through multiple points in the claims lifecycle which allows the corporation to measure treatment effectiveness for injuries through internationally recognized ICD-10 codes.
7. Improved interaction with stakeholders, partners and service providers, accomplished through:
   - Tracking of communication, key decisions, events and services across the program

- The consideration of Presley Reed guidelines and treatment effectiveness reports.

8. Increased Employee Satisfaction, accomplished through:
    - Enhancing jobs, by allowing staff to perform more as knowledge workers and within a leading claims administration organization
    - Work processes based on leading practices
    - Improved training opportunities
    - A new team-based organizational structure.
9. Enhanced Corporate Memory, accomplished though:
    - The creation of a number of document repositories, using collaborative tools and processes such as the Electronic Document Management System (EDMS) and the new Enterprise Data Warehouse (EDW).

In addition, the implementation of the new claims management system has resulted in the following benefits:

- Improved consistency and quality in the management of claims
- Enabled tracking and reporting of key performance indicators
- Improved timeliness of payment of benefits
- Allowed for effective workflow management.

Other recommendations addressed in the body of the report include the development of a brochure to more clearly explain PIPP benefits to catastrophically injured claimants. The timing of the implementation of this brochure was dependent on a portion of the legislative amendments being implemented August 22, 2011. A product brochure is currently being developed.

In addition, BI^3 includes a comprehensive document management system with over 300 templates, including decision letters, drafted in as clear a language as possible given PIPP is a legislated plan. Case Managers also communicate with the customer to explain the decision rationale for more complicated decisions.

MPI will continue regularly scheduled reviews of all PIPP benefits for government, including the few non-indexed benefits mentioned in the report.

Unresolved appeals at the Claimant Adviser Office (CAO) and appeals which have not yet been scheduled for hearing at the Automobile Injury Compensation Appeal Commission (AICAC) impact MPI's customers. However, the Legislation ensures these bodies conduct their work and report to their Minister completely independently of MPI. MPI is committed to working with them and in December 2010, participated in the creation of the Mediation Office.

Determining benefit eligibility and benefit entitlements

Recommendation 1: We recommend that MPI, together with the Manitoba government, clearly define eligible expenses for "return to normal life" and "reintegration into society", and the types of vehicular accidents that entitle injured people to PIPP benefits.

> ***Response:*** MPI Regulations were amended August 22, 2011 to redefine Section 138 "return to normal life" and "reintegration into society". This section provides coverage for the following:
>
> - Resumption of pre-accident recreational and family activities
> - Life event activities
> - New recreational activities
> - Additional Supportive Care
> - All residence modifications
> - Attendant assistant care.
>
> Section 70 of the MPIC Act legislatively defines "accident", "automobile", "bodily injury caused by an automobile". As this is law within Manitoba, MPI only has the authority to interpret and apply these legislated definitions to the best of its ability. The 3 rulings on eligible vehicular accidents reported as audit findings have extraordinary circumstances and MPI considers these rulings when assessing claim validity. Other significant checks and balances used by MPI to ensure consistent application of the legislation include MPI's Corporate Coverage Committee, Fair Practices Office, Internal Review Department as well as the appeals processes administered by the independent offices of the Automobile Injury Compensation Appeal Commission and Claimant Adviser Office.

Recommendation 2: We recommend that MPI:

- **Provide additional written benefit information tailored for catastrophically injured claimants and claimants requiring vocational rehabilitation**
- **Post the PIPP procedures manual on its website.**

> ***Response:*** We accept the recommendation and are in the process of developing a product brochure for catastrophically injured claimants to supplement the existing product information. We will consider the best method of improving the information for claimants requiring vocational rehabilitation.

Recommendation 3: We recommend that MPI improve its processes so that it meets its target of providing claimants with their first income replacement benefits within 21 days.

> *Response:* We accept the recommendation and will continue to review work processes, technology and resourcing to meet this target. A phased implementation of a new "active case management" strategy will commence in December 2011. These new processes include a proactive approach to collecting required supporting claim information which will expedite the first income replacement payment to be paid to the claimant within 21 days from the date the accident was reported.

Recommendation 4: We recommend that MPI use training, supervision, electronic reminders, checklists or other similar mechanisms to ensure all benefits are identified and paid promptly.

> *Response:* We accept the recommendation. As part of the Bodily Injury Improvement Initiative (BI^3), MPI adopted a new claims management system September 2010. This system features the following tools:
>
> - Robust workflow management tool with checklists, reminders, and exception reports
> - Paperless workflow to move work to people versus people to work
> - Comprehensive real-time rehabilitation management tool including milestones and timelines
> - Claimant's medical restrictions are categorized by world accepted injury codes (ICD-10)
> - Physical demands of their occupation are based on the National Occupations Classification
> - Expected disability duration
> - Treatment plans and medical interventions are provided by MD Guidelines
> - Data collection capability which allows management to monitor the consistency and timeliness of providing benefits.
>
> MPI has implemented a comprehensive structured training program and a new organizational design to enhance case management effectiveness. Technical training, procedures, and manuals are now administered by a dedicated department (Knowledge Management Services). The organizational structure was revised to foster collaboration through implementation of a knowledgeable worker and team environment. The efficiencies gained, technical tools, and enhanced training and support has allowed case managers to focus on core case management responsibilities

and injury management coordinators to focus on staff supervision and effective claims administration.

MPI believes the BI^3 initiative will ensure that all benefits are paid promptly.

Recommendation 5: We recommend that MPI improve its consistency in offering and providing benefits for:

- **Home renovations**
- **Exercise equipment**
- **Grief counseling**
- **Expenses exceeding the budgeted hours, but not the dollar budget, for personal care assistance**
- **Interest on late benefit payments.**

Response: We accept the recommendation. The implementation of the new claims management system will provide workflow management, reminder tasks, exception reporting, performance reporting, and be able to identify anomalies. These tools will allow management to identify inconsistencies in an effective and timely manner. In addition, improved processes and updated policies have been implemented to provide further consistency.

The BI^3 implementation was a combination of process refinement, people, and technology. The revised processes ensuring the consistency requested within the recommendation are as follows:

- Home Renovations: All home renovation reimbursement must be a component of the claimant's rehabilitation plan and must be approved by the Home Renovations Review Committee
- Exercise Equipment: All major exercise equipment reimbursement must be a component of the claimant's rehabilitation plan
- Grief Counseling: Structured scripting has been provided to case managers assigned to fatality claims which clearly advise the claimant's family of benefits available to them
- Personal Care Assistance: A comprehensive review of decision letter templates has been undertaken to ensure consistency
- Interest: All interest calculations have been assigned to the IRI Calculator Unit. They calculate and process payment for the interest owing to the claimant. Centralization of this function has improved its consistency.

In addition, the BI^3 technology has robust data collection capability which allows management to monitor the consistency of providing benefits.

Recommendation 6: We recommend that MPI send decision letters for all benefit decisions, adequately explaining reasons for decisions in plain language.

> *Response:* MPI endeavours to comply with its legislated responsibility to send decision letters for all benefit decisions. MPI expects that new template decision letters will improve the consistency and clarity of written communication to its claimants. In addition to decision letters, case managers speak directly with claimants to explain more complicated decisions.

Recommendation 7: We recommend that MPI work with AICAC, the CAO, and the Mediation Office to assist in reducing the number of unresolved appeals at the CAO and appeals not yet scheduled for hearing at AICAC.

> *Response:* At the direction of government, MPI has worked in conjunction with the CAO and AICAC to implement a Mediation Office Pilot. The Mediation Pilot is a 2 year pilot that provides mediation as an option to claimants with appeals to the AICAC. One goal of the pilot is to reduce wait times for AICAC appeals.
>
> The corporation will consult with AICAC and the CAO, 2 independent offices of the government to determine if MPI can assist with this matter.

Calculating benefits

Recommendation 8: We recommend that MPI clearly and regularly communicate to claimants the types of changes in personal circumstances they must report, and promptly follow-up all written and verbal reports received.

> *Response:* MPI accepts the recommendation and is investigating potential alternatives to address this.

Recommendation 9: We recommend that MPI review and clarify its policy for waiving different types of overpayments to ensure it is logical and consistently applied.

> *Response:* MPI accepts the recommendation. The BI^3 claims system has a series of secured actions which prevent or allow activities within the system depending on a user's role. The ability to waive overpayments will be built into the application to ensure the consistency recommended.

Recommendation 10: We recommend that MPI reduce the delays in tax reconciliations and benefit adjustments by having claimants authorize it to obtain their tax information directly from the Canada Revenue Agency.

> ***Response:*** MPI will investigate this recommendation with the Canada Revenue Agency.

Recommendation 11: We recommend that MPI regularly review all non-indexed benefits and ensure they remain reasonable and fair over time.

> ***Response:*** MPI accepts the recommendation. Three (3) of the 4 remaining non-indexed benefits with legislated limits (grief counselling, medical reports requested for internal review and appeal, critical care allowance) have been reviewed since the audit period. Clothing allowance has been submitted to the Product and Policy Management Department for review.

Recommendation 12: We recommend that MPI project the number of part-time, temporary, seasonal, and retired claimants (including those currently receiving long-term income replacement top-up benefits who will eventually retire) that may obtain benefits in excess of their likely economic losses and estimate the future dollar impacts.

> ***Response:*** MPI accepts the recommendation.

Recommendation 13: We recommend that MPI compare the costs of compensating claimants who require only periodic help with snow removal and lawn care with the savings, risks, and injury-related costs resulting from not compensating these claimants.

> ***Response:*** MPI accepts the recommendation.

Managing claimant rehabilitation

Recommendation 14: We recommend that MPI:

- **Prepare rehabilitation plans that clearly document claimants' medical restrictions and set timelines and milestones for reaching maximum medical improvement**
- **Regularly monitor and document medical progress so that benefits are promptly adjusted to reflect updated medical reports and follow-up investigation occurs when expected medical progress is not achieved.**

> *Response:* MPI accepts the recommendation. The BI^3 system has a comprehensive real-time rehabilitation management tool including milestones and timelines. The claimant's medical restrictions are categorized by world accepted injury codes (ICD-10), physical demands of their occupation are based on the National Occupations Classification, expected disability durations, treatment plans and medical interventions are provided by MD Guidelines. This tool is being used to provide claimants rehabilitation based on best practices.
>
> The information provided by the system is to be shared with claimants, medical treatment providers, and rehabilitation specialists to foster consistent understanding of the claimant's condition and expected recovery.

Recommendation 15: We recommend that MPI include a conflict-of-interest clause (similar to the clause used in its contracts with its healthcare services staff) in its service agreements with its independent medical examiners, and that it expand these clauses to prohibit any involvement with a MPI file where there could be a potential conflict-of-interest with a patient, friend, neighbor, or relative.

> *Response:* MPI will review its independent medical examiner template engagement letter to include a conflict-of-interest clause.

Recommendation 16: We recommend that MPI prepare vocational rehabilitation plans for all claimants able to work but unable to return to the same type of work done before the accident, and that plans include:

- **Comparison of the claimant's functional capacity, interests and aptitudes, educational background, and existing transferable skills to the physical demands and other requirements of the proposed new vocation**
- **Analysis of the labour market demand for the proposed new vocation**

- **Calculation of the future financial implications and analysis as to whether funding additional training might recover more of the pre-accident wage**
- **Identification of existing barriers to success and proposed mitigation strategies**
- **Evidence of claimant buy-in.**

> ***Response:*** MPI's new claim management system has a robust rehabilitation plan tool which addresses the recommendations noted above.
>
> In November 2009, MPI implemented an approval process for residual capacity determinations where management reviews and approves all determinations. This process was established to ensure all relevant points noted within the recommendation were considered.

Recommendation 17: We recommend that MPI support all residual capacity determinations with documentation clearly demonstrating that the claimant's attributes match the physical, educational and other requirements of the determined occupation, and that there is a sufficient market demand to reasonably expect the claimant to be able to acquire a job in that occupation.

> ***Response:*** MPI accepts the recommendation. The rehabilitation plan tool within BI^3 will ensure consistent residual capacity determination documentation including the claimant's injuries, transferable skills, medical interventions, permanent impairment, and other rehabilitation factors.
> In November 2009, MPI implemented an approval process for residual capacity determinations where management reviews and approves all determinations. This process was established to ensure all relevant points noted within the recommendation were considered.

Recommendation 18: We recommend that MPI ensure that vendor recommendations made to claimants are based on analysis of vendors' products, services, timeliness, costs, and available discounts.

> ***Response:*** MPI accepts the recommendation and will consider such opportunities as allowed within the provisions detailed in Regulation 40/94 of the MPIC Act.

Recommendation 19: We recommend that MPI compare the costs and benefits of out-sourcing vocational rehabilitation services with the costs and benefits of employing its own rehabilitation staff.

Response: MPI accepts the recommendation.

Recommendation 20: We recommend that MPI use "request for services" letters consistently and that the letters clearly state reporting requirements, engagement start and end dates, and case coordination expectations.

Response: MPI accepts the recommendation.

Recommendation 21: We recommend that MPI ensure that supervisors:

- **Comply with its claim file review requirements**
- **Document support for all performance ratings.**

Response: MPI accepts the recommendation and will act on it within its enhanced employee performance management protocols.

Processes have been reviewed and a phased implementation of a new "active case management" strategy will commence December 12, 2011. These new processes include a strategy to provide tools for supervisors to monitor the file progress and employee performance. The new organizational structure fosters a collaborative environment to enhance performance management.

Recommendation 22: We recommend that MPI use the results of supervisory and quality assurance reviews to help identify corporate and individual training needs.

Response: MPI accepts the recommendation. Quality Assurance reviews and recommendations will be considered in upcoming training plans.

Performance information

Recommendation 23: We recommend that MPI augment its claims management information by:

- **Including customers with complex and long-term claims in its customer surveys**
- **Measuring claim duration**
- **Tracking return-to-work outcomes for claimants receiving vocational rehabilitation assistance.**

> *Response:* MPI's new claim management system has robust data collection capabilities and reporting potential which addresses the recommendations noted above.
>
> MPI is in the process of investigating the feasibility of surveying catastrophically injured claimants.

Chapter 6

Special Needs Education

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Main points

What we examined

Manitoba Education (Education) sets standards to ensure school divisions and independent schools deliver appropriate educational programming to students who require specialized services because of their physical, sensory, cognitive, social/emotional, behavioural, or communication needs. It also provides funding and programming support for these students.

We examined Education's systems and practices for supporting the quality of special needs education, funding special needs education, and measuring and reporting special needs education performance information.

Why it matters

Between 2000/01 and 2009/10, enrolment for student-specific special needs funding increased 86%, from 3,850 to 7,156 students, and related funding doubled from $40.8 to $82.0 million. During the same time period, total school enrolment decreased 7% and total Provincial school operating funding increased 26%, from $730.6 to $920.8 million. Given the significant growth in special needs enrolment and funding, we undertook this audit to assess how Education was managing its oversight of special needs education.

What we found

Education had developed regulations, standards, and guidelines that clearly outlined its expectations for the delivery of special needs education, but it was not monitoring for compliance. We found a low level of school division compliance with certain key standards, underlining the need for better monitoring.

Other significant areas requiring Education's attention were:

- It had limited processes to verify the information on funding applications received from the school divisions, and its documentation often did not adequately explain its funding decisions.
- Although one of Educations' objectives was to maximize the outcomes being achieved for students with special needs (consistent with its objectives for all students), it did not monitor or publicly report the outcomes being achieved for these students.
- It was aware of clinician shortages and anecdotal accounts of long waitlists for students to receive clinical assessments (particularly in rural and

northern Manitoba), but needed to work with school divisions to determine if students were receiving timely access to clinician assessment services.

Other important findings included:

- Education consulted a wide variety of stakeholders in developing standards, guidelines, and support documents for school divisions and parents
- Standards, guidelines and support documents were all generally consistent with those in other provinces
- Stakeholders had differing views on when or if educational assistants (for whom Education set no educational requirements, consistent with other provinces) were performing any paraprofessional duties not allowed under the *Persons Having Care and Charge of Pupils Regulation*
- Education provided consultation services to school divisions and schools on general and student-specific matters, maintained a limited inventory of assistive technology devices for short-term loan, provided technical support for commonly used assistive technology purchases, and had begun developing learning resources for life skills programs for special needs students
- Education had not recently or formally investigated the potential cost savings and benefits of centralized purchasing of assistive technology licenses for school divisions
- Education ensured and supported teachers' special education knowledge through its teacher certification process and professional development offerings
- Detailed eligibility criteria for funding were not available to school divisions or parents
- Existing departmental financial and operational information on special needs education could be enhanced
- There was limited public reporting on the enrolment and costs for student-specific funding for special needs.

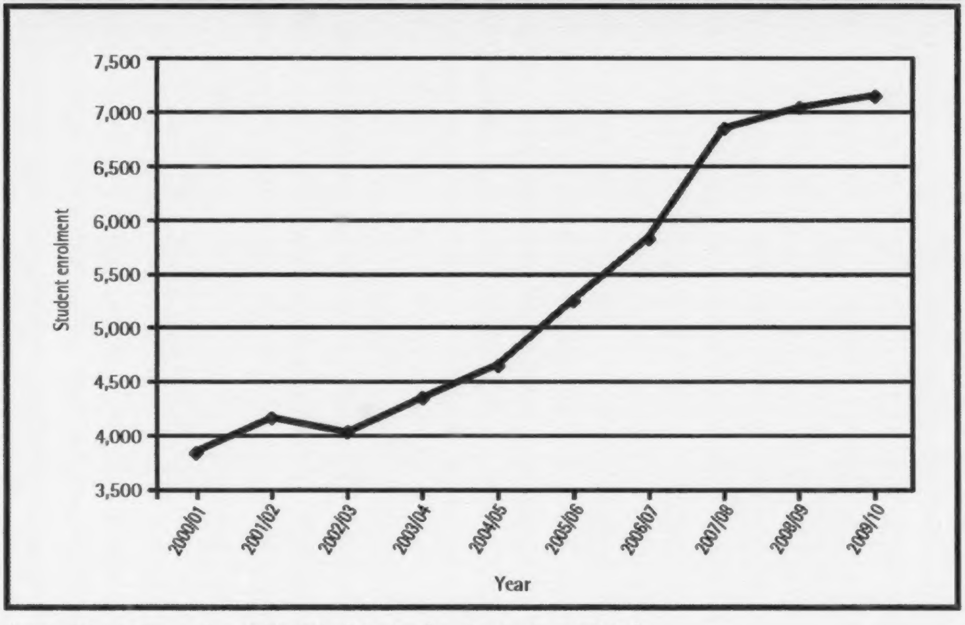
Background

Students with special needs

Students with special needs are those who require specialized services or programming when deemed necessary by the in-school team because of exceptional learning, social/emotional, behavioral, sensory, physical, cognitive/intellectual, communication, academic or special health-care needs that affect their ability to meet expected learning outcomes.

Figure 1 shows the public school trend in enrolment for student-specific special needs funding in Manitoba over the past 10 years. Between 2000/01 and 2009/10, enrolment increased 86%, from 3,850 to 7,156 students, primarily due to a broader definition of autism spectrum disorder, as well as more students identified in the emotionally or behaviourally disordered and multi-handicapped enrolment categories. During the same time, total public school kindergarten-to-grade 12 enrolment decreased 7%, from 189,912 to 177,500 students.

Figure 1: Student-specific special needs enrolment increased 86% from 2000/01 to 2009/10



Source: Schools' Finance Branch, Manitoba Education (based on funding statistics)

Web Version

Roles and responsibilities

Education has overall responsibility for developing and overseeing the legislation, regulations, and policies for providing appropriate educational programming to students with special needs. It also provides student-specific funding for special needs, as well as consulting and other support services.

Manitoba's 37 school divisions can decide the types of programming they will provide to students with special needs, within the limits of Provincial legislation. In Manitoba, rights and responsibilities for education are defined in *The Public Schools Act*, *The Education Administration Act*, and related regulations. These set the provincial standards that school divisions must meet in providing access to appropriate educational programming and services for all students, including those with special needs.

Special education programming is delivered by school-based and division-based student support teams. These typically include school administrators, resource teachers, classroom teachers, school clinicians (such as school psychologists and speech language pathologists) and educational assistants.

Manitoba's philosophy of inclusion

Education bases its standards, regulations and policies for students with special needs on a philosophy of inclusion. It describes an inclusive school as one where *"all students are provided with the supports and opportunities they need to become participating students and members of their school communities"*.

Appropriate educational programming

Education defines appropriate educational programming as *"a collaborative school-family-community process where school communities create learning environments and provide resources and services that are responsive to the lifelong learning, social and emotional needs of all students"*. This recognizes that some students require accommodations (such as adaptations, curriculum modification, or individualized programming) to enable and improve learning. In practice, it also recognizes that different school divisions offer different types of educational programming to meet the diverse needs of students with special needs.

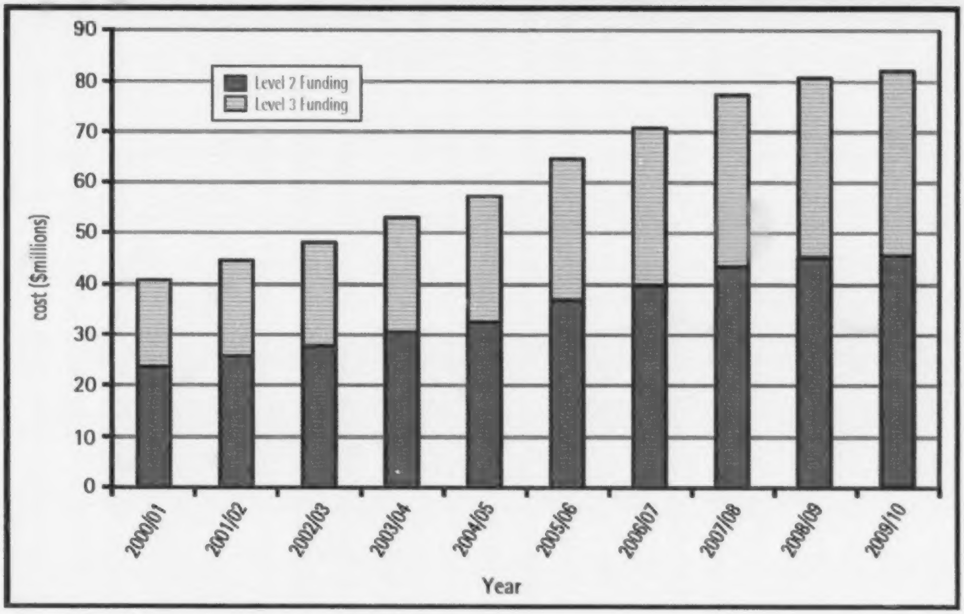
Education expects students with special needs will typically be placed in regular classrooms with other students in their age group. However, school divisions may also have specialized classrooms for particular student needs. The programming offered varies between divisions and depends on the severity of students' needs and the resources available.

Special needs funding

Education's funding process considers students as having Level 2 (severe) or 3 (more complex and profound) special needs. In 2009/10, individual student funding amounts were $8,955 for students with Level 2 needs and $19,920 for students with Level 3 needs. School divisions also receive a separate grant based on total student enrolment that includes funding for what in the past was referred to as Level 1 needs.

As **Figure 2** shows, Education's funding for Level 2 and 3 special needs doubled from $40.8 million in 2000/01 to $82.0 million in 2009/10. As rate increases over this time were modest, this growth mostly reflects increased student enrolment for special needs funding. During the same time, total Provincial school operating funding increased 26% (from $730.6 to $920.8 million), with the portion for student-specific special needs funding increasing from 5.6% to 8.9% of the total.

Figure 2: Grant funding for Level 2 and 3 special needs doubled between 2000/01 and 2009/10



Source: Schools' Finance Branch, Manitoba Education

Audit approach

Audit objectives

We examined the adequacy of Education's systems and practices for:

- Supporting the quality of educational services delivered by school divisions to students with special needs, including processes for:
  - developing standards, guidelines and program support documents
  - monitoring compliance with regulations, standards and guidelines
  - providing consulting and other support services
  - ensuring qualified and sufficient school personnel
- Determining eligibility for student-specific special needs funding
- Tracking, monitoring and reporting financial and operational information for special needs education, including student outcomes.

Audit scope

We conducted the audit between November 2009 and March 2011 and primarily examined the systems and practices in place between September 2007 and June 2010. Our audit was performed in accordance with the value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

The audit included review and analysis of applicable legislation; information on special needs programs in selected other provinces; and departmental policies and practices, files, records, reports, correspondence, and other program documentation. We interviewed staff from Education, other government departments, school divisions, various stakeholder organizations, and 4 parents (from both urban and rural school divisions) who volunteered to speak with us. As well, we visited 4 school divisions (2 large urban divisions, 1 rural division, and 1 northern division) and reviewed student files in those divisions.

We focused our audit on Education's oversight of special needs education in the public school system. Education also annually provides an additional $2.0 million of special needs funding for 175-180 students in independent schools and requires these schools to comply with the same standards as public schools.

Audit findings and recommendations

1. Supporting the quality of special needs education

1.1 Standards, guidelines and program support documents

1.1.1 Standards and guidelines consistent with other provinces

Education had developed standards and guidelines to assist school divisions and schools with planning and implementing appropriate educational programming for students with special needs. It defined standards as "*province-wide criteria that school boards must try to meet*" and guidelines as "*elaborations on the requirements of legislation and regulations in a particular area*".

The *Appropriate Educational Programming Regulation* under *The Public Schools Act* set most of the regulatory standards directly related to special needs education, but there were other relevant regulations, such as the *Persons Having Care and Charge of Pupils Regulation* under *The Education Administration Act*. Education had also developed a separate document, *Appropriate Educational Programming in Manitoba: Standards for Student Services*. It reiterated and elaborated on the *Appropriate Educational Programming Regulation* and was physically distributed to school divisions and posted on Education's website.

Introduction of the *Appropriate Educational Programming Regulation* in 2005 was a significant milestone. The special needs of students were protected under both the *Canadian Charter of Rights and Freedoms* (proclaimed in 1981) and Manitoba's *Human Rights Code* (proclaimed in 1987) and Education had developed related guidelines for school divisions in 1989. But until 2005 Manitoba had no regulated standards for accommodating students with special needs. It was the last province to enact legislation and regulatory standards in this area.

In general, standards covered the following different areas:

- Identifying special needs
- Developing and implementing individual education plans
- Providing reasonable accommodation for all students based on identified needs
- Providing information on local educational programming options available for students with special needs
- Coordinating services with other government departments and agencies also serving children with special needs
- Assessing student learning and reporting on learning progress to parents
- Resolving disputes over the provision of special needs services

- Disciplining students with special needs
- Stipulating persons allowed to have care and charge of students and allowable paraprofessional duties
- Providing necessary and appropriate professional learning opportunities to teachers of special needs students
- Reflecting a commitment to inclusive education in divisional policies.

Examples of related guidelines and protocols included:

- A handbook with guidelines for developing and implementing individual education plans
- Guidelines for transitioning children with special needs into the school system and for registering students in care of child welfare agencies
- A protocol for transitioning students with special needs from school to the community as they reach adulthood (including any required interdepartmental coordination and communication).

We compared Manitoba's standards and guidelines to those in 4 other provinces (British Columbia, Alberta, Ontario, and Nova Scotia) and found they were generally consistent, although sometimes variable in degree of detail.

1.1.2 Support documents mostly consistent with other provinces

Education had developed many different support documents for special needs education. These were less prescriptive than the standards and guidelines, designed to provide more general direction to school communities on sound educational practice. They covered such diverse topics as:

- Planning for alcohol-affected students
- Supporting Deaf and hard of hearing students
- Developing and implementing programming for students with autism spectrum disorders
- Defining the role and responsibilities of educational assistants
- Developing and implementing modified and individualized programming
- Planning for behaviour issues
- Enhancing oral language in kindergarten children
- Providing counselling and guidance services in schools.

We compared Manitoba's support documents to those in the same 4 provinces we used to compare standards and found that Manitoba's were generally consistent. Many of Manitoba's support documents considered students' functional needs, rather than their diagnosed condition. As a result, they covered some topics (attention deficit hyperactivity disorder, mental illness, and intellectual disabilities) indirectly. In contrast, some provinces had developed support documents specifically for these topics.

We also discussed Manitoba's support documents with officials from 4 school divisions. In all cases, the officials felt Education's existing support documents met their needs.

1.1.3 Variety of user-friendly information for parents, but website difficult to navigate

Education's main support document for parents was *A Handbook for Parents of Children with Special Needs in School.* It was available on Education's website and physically distributed to schools, as well as to various parent and other stakeholder interest groups. The Handbook had general information on identifying and assessing special needs, individual educational programming, transition planning, and communication with the school. The formal dispute resolution process set out in the *Appropriate Educational Programming Regulation* and the process for obtaining student-specific special needs funding were covered in other documents on the website, although not included in the Handbook.

Education's support documents for parents often included definitions for important terms that parents might be unfamiliar with, suggested questions for parents to ask, recommended which personnel within the school to contact for different issues, and provided checklists for parents. They also directed parents to related documents on Education's website, as well as related websites and resources. All website information was available in both English and French. The website also usually listed a department person or place to contact for more information on specific topics.

Standards, guidelines, and support documents intended for school divisions and schools were also available to parents on Education's website, as well as support documents intended for a very broad audience. As an example, the *Guidelines for Early Childhood Transition to School for Children with Special Needs* were designed to be useful to school and daycare personnel, support agencies, and other government departments providing services to children with special needs, as well as parents.

Website organization of parent information was not user-friendly, making it sometimes difficult to find the most relevant information quickly. Parents unfamiliar with the special education system would not necessarily know to look under "Student Services" in the "Information for Families and Communities" section of the website to find relevant information. And the website did not clearly alert a user to the fact that Education had sometimes created 2 similarly named documents on the same topic: 1 more highly summarized and intended primarily for parents and 1 more detailed and intended for school divisions and schools. Also, in a few cases, website links to other information were expired.

Education officials participated annually in various workshops for parents of special needs children, where they presented and elaborated on the information in parent support documents. Some workshops were organized by Education itself, others by external stakeholders who would then invite Education to attend. Recent topics discussed included individual education plans, transition planning, behaviour plans, and progress toward inclusive education. There were also several workshops specifically for Deaf and hard of hearing issues.

We interviewed 4 parents of students with special needs. Two (2) were familiar with Education's website and 1 reported they found it helpful, although it had a lot of information to sort through. Two (2) were unclear about the link between the application process for Level 2 and 3 funding and the provision of appropriate educational programming. Two (2) had experienced difficulty obtaining what they felt were the necessary educational supports for their children, but only 1 was aware of the formal dispute resolution process.

> **Recommendation 1:** We recommend that Education improve the organization of its website information to make it more user-friendly for parents of students with special needs.

1.1.4 Adequate periodic review of standards, guidelines and support documents

Education did not have a formal process for periodically reviewing standards, guidelines, and support documents (for school divisions and schools, parents and other stakeholders) to ensure they remained current and relevant. Instead, Education officials determined the need for new or updated standards, guidelines and support documents based on informal stakeholder feedback and general awareness of accepted best practices and stakeholder needs. They also monitored developments in western provinces and the territories through monthly conference calls with provincial and territorial Education officials. In addition, they considered issues raised and discussed by the Students Services Inclusive Education Advisory Committee, which had representation from most key stakeholder groups and provided a forum for discussion on inclusive education and special needs issues.

Once Education identified a need to update or develop new standards, guidelines, or support documents, it reviewed what was already in place in other Canadian provinces and territories, as well as any relevant best practices literature, and formally consulted with stakeholders. It might consider also periodically conducting an environmental scan of this nature to help identify potential needs.

1.1.5 Many key stakeholders routinely consulted

Education typically consulted several key stakeholder groups when developing and updating standards, guidance, and support documents. These groups represented teachers, parents, school clinicians, education administrators, school board trustees, and advocates, agencies and associations serving the disability community.

We selected a sample of standards, guidance, and support documents (the *Appropriate Education Programming Regulation*, the *Standards for Student Services* document, the *Individual Education Plan Handbook*, the *Handbook for Students with Autism*, and the support document for alcohol-affected students) and found that, in all cases, the key stakeholders described above were consulted.

The consultation process was extensive. Education officials held 49 meetings with education stakeholder groups and parents in 34 school divisions when it developed the *Standards for Student Services* document.

As circumstances warranted, Education consulted with officials from other government departments also serving students with special needs, albeit in different capacities (such as Family Services and Consumer Affairs, Health, and the Healthy Child Manitoba Office).

Education officials told us that their past consultations with school division personnel likely included some educational assistants. They had not typically consulted directly with representatives of educational assistants, even though a significant number of assistants worked closely with special needs students, and under the general supervision of teachers, were responsible for implementing many portions of students' individual education plans. Education consulted with the Educational Assistants of Manitoba (an organization formed in November 2008), as well as unions representing educational assistants, when it developed the *Educational Assistants in Manitoba Schools* support document. Education officials told us they planned to continue consulting with educational assistants, when appropriate.

> **Recommendation 2:** We recommend that, as part of its broader consultation process, Education consult more regularly with representatives of educational assistants when it develops or updates standards, guidelines or support documents that may affect educational assistants' delivery of services to students with special needs.

1.2 Compliance with regulations, standards and guidelines

1.2.1 Education not monitoring school division compliance

Education did not monitor whether school divisions were complying with its regulations, standards and guidelines related to special needs education; nor did it ask school divisions to monitor and periodically self-report on compliance. Education officials told us that this was consistent with section 41(1)(y) of *The Public Schools Act*, stating "*every school board shall comply with directives of the minister*". They also told us that, while they did not monitor compliance, they offered help to school divisions and schools whenever they became aware of any significant non-compliance issues. In addition, officials noted that they considered compliance with regulations, standards and guidelines whenever they held formal dispute reviews to investigate parent complaints.

Compliance monitoring helps ensure that regulations, standards and guidelines are being followed and that planned service quality is being achieved. Setting standards without developing an accompanying monitoring system reduces their effectiveness.

We reviewed compliance monitoring in 4 other provinces. Two (2) provinces audited school divisions' student files and 1 province reviewed detailed school board special education plans to ensure compliance with provincial standards.

To further examine compliance issues, we selected the standards and guidelines in 3 important areas: individual educational planning, allowable paraprofessional duties, and public availability of descriptions of local educational programming and programming options for students with special needs. This work is discussed in sections 1.2.2 to 1.2.4.

> **Recommendation 3:** We recommend that Education work with school divisions to develop processes to monitor and periodically verify the level of school division compliance with special needs education regulations, standards and guidelines.

1.2.2 Compliance with standards for individual education planning and progress reporting requires improvement

As described in Education's *Handbook for Student Services*, individual education planning is a process used by educators and other members of student support teams to:

- Develop a common understanding of the student's strengths, interests, and needs

- Share information and observations about the student's behaviour and learning in a variety of settings
- Establish current levels of performance
- Identify priorities for programming
- Communicate programming information to all members of the student's support team
- Monitor and report on student progress and achievement
- Ensure continuity in programming.

Section 5(2) of the *Appropriate Educational Programming Regulation* requires school divisions to prepare individual education plans (IEPs) whenever the usual supports will be insufficient to help students meet the learning outcomes they can reasonably be expected to achieve. IEPs must identify the learning outcomes that can reasonably be achieved and the pupils' requirements for meeting them, taking into account any behavioural or health needs. They must also be consistent with provincial protocols for transitioning special needs students to and from schools. And parents must be allowed to participate in preparing and updating the plans.

The *Standards for Student Services* document states that IEPs must be prepared for all students receiving Level 2 or 3 special needs funding, and be evaluated and updated at least annually. It also states that parents must be informed of students' progress at regularly scheduled reporting periods throughout the year.

The IEP Handbook states that appropriate student-specific outcomes are a fundamental component of IEPs and should be specific, measurable, achievable, relevant, and time-related.

We examined a sample of 78 Level 2 and 3 student files from 4 school divisions and found that:

- 99% had IEPs on file
- 90% had an IEP for the most recent school year
- Where applicable, in most cases there was some evidence of transition planning: 44% had written transition plans for entering school, 64% had written plans for graduation, and 65% of students in care of child welfare agencies had the required transitioning forms describing their background and programming needs.

Of the IEPs reviewed:

- 78% had evidence of parental involvement in developing the IEP
- 84% indicated whether the student was following a regular, modified, or individualized curriculum

- 93% included expected learning outcomes. Of these:
  - 32% had outcomes that were vague or not measureable (for example, *"the student will further develop her reading and comprehension skills"* or *"the student will develop the skills necessary to initiate and maintain peer relationships"*)
  - 24% had no change in some or all expected outcomes from 1 year to the next, without any indication that progress had been reviewed or considered (including 2 cases where progress reports indicated the outcomes had already been achieved)
- 24% lacked learning outcomes for some of the supports being provided.

Regular evaluation and reporting on student progress are critical. Without these, IEPs cannot be adjusted so that expected learning outcomes remain appropriate and supports remain effective. In the files reviewed that had IEPs with outcomes, we found that:

- 24% had robust progress reporting directly linked to the expected learning outcomes outlined in the IEPs
- 26% had more limited progress reporting generally linked to expected learning outcomes
- 7% noted progress reporting had been completed, but had no further details
- 43% had no documented reporting on outcomes at all.

In most cases, written reports to parents were standard report cards not linked to the expected learning outcomes in the IEPs. We also found examples where report card information was inconsistent with other information in the student files. In one case, the report card described a student as *"responsible and mature, an independent learner, and a pleasure to work with"*. But the funding application to Education at the same time described the student as verbally and physically assaulting staff and students several times a day, and displaying dangerous behaviours towards both self and others several times a week.

> **Recommendation 4:** We recommend that Education work with school divisions to improve the level of compliance with the regulations, standards and guidelines for individual education planning, and to further develop the quality of expected learning outcomes and progress reporting.

1.2.3 Allowed duties of educational assistants unclear

Section 4(c) of the *Persons Having Care and Charge of Pupils Regulation* states that paraprofessional duties may not include *"directing the learning experiences of pupils, including assessing individual needs, selecting materials to meet those needs and evaluating progress".*

Education developed its *Educational Assistants in Manitoba Schools* support document in an attempt to help clarify the role and responsibilities of educational assistants. The document has an appendix with separate columns listing the duties of teachers and educational assistants, with a third column listing "joint activities". The document states that some of the practical skills of educational assistants include the ability to:

- Engage students in activities that promote learning
- Motivate and encourage student participation
- Support student learning by providing explanations and skill demonstrations, and by modelling appropriate classroom behaviour
- Assist students in interpersonal conflicts
- Apply strategies to build student self-confidence and promote student independence.

Not all stakeholders interpreted the regulation, together with Education's support document, similarly. Based on our discussions with various stakeholders, we found that some believed it meant educational assistants should perform only general administrative assistant functions or "non-professional" tasks; others believed it meant educational assistants should not be "instructing" or "teaching"; and still others believed it meant educational assistants should not be developing or assessing learning outcomes, strategies and supports.

Some school division officials told us that educational assistants were sometimes instructing individual students. And some educational assistants told us that, in their view, they were "teaching". There was no consensus as to whether this was violating standards or inappropriately "*directing the learning experiences of pupils*".

During our review of student files, we noted that educational assistants were often responsible for implementing many portions of the IEPs, typically under the general supervision of a resource teacher or a clinician. But it was unclear if their responsibilities extended to "*directing the learning experiences of pupils*" and we were unable to determine if they were complying with the *Persons Having Care and Charge of Pupils Regulation.*

Education officials told us that they believed that stakeholders' confusion partly stemmed from their varied interpretations of terms such as "teaching" and "directing learning experiences". They felt that they could perhaps do more to clarify the language being used in the regulation and in describing roles, but that the system might also need to tolerate some ambiguity.

> **Recommendation 5:** We recommend that Education further clarify what constitutes allowed paraprofessional duties and communicate this guidance to school divisions and other stakeholders.

1.2.4 School divisions partially complying with requirement to publicly disclose local programming options

The *Standards for Student Services* document states, *"School divisions should make available to the public written descriptions of local educational programming and programming options for students with exceptional learning needs"*.

We reviewed the special needs education information available in 4 school divisions, including website and hard copy information. The majority had some special needs information for parents (such as an explanation of inclusive education, a description of the individual education plan process, or a parent handbook similar to the one developed by Education).

Considering the differences in the school divisions we examined (2 large urban, 1 rural and 1 northern), we expected the local programming options for students with special needs and the level of detail in public information to vary, reflecting each school division's unique character. However, only 2 school divisions fully complied with the requirements of the standard and described the details of local special needs programming options. Another provided a list of resource personnel available (such as community school networker, inclusion specialist, and behaviour coach), from which one might infer some programming options.

> **Recommendation 6:** We recommend that Education work with school divisions to ensure the public has easily accessible and complete information on programming options at all locations.

1.3 Support services for school divisions and schools

1.3.1 Education participated in many general and student-specific consultations

Education had 34 staff (16 consultants and clinicians for the general population of students with special needs, 10 consultants for Deaf and hard of hearing students and 8 consultants for blind and visually impaired students) available to consult with divisional clinicians and school teams. In the 2010/11 school year, Education reported that the generalist consultants and clinicians participated in 428 school-wide consultations and 427 student-specific consultations. Consultations were most commonly related to speech language pathology, autism, and positive behaviour supports, in that order.

During the same time, Education reported that consultants for the Deaf and hard of hearing participated in 1,106 sessions for 391 students and consultants for the blind and visually impaired participated in 1,806 sessions for 249 students, including 26 students receiving Braille instruction. These consultants typically provided more direct and intensive services than the generalist consultants.

School division officials told us that consultants were typically responsive and helpful.

1.3.2 Learning resources for life skills programs under development

Life skills programs are important to some special needs students. Life skills programs teach students how to manage money, groceries, transportation, personal grooming, cooking and other household duties, shelter, and personal safety issues, as autonomously as possible. They also help prepare students to participate in the workplace and community as fully as possible upon graduation.

Because life skills are important, we expected Education to have developed learning resources in this area. Education planned to develop several life skills learning resource modules, but only a draft shaving module existed at the time of our audit. Officials in the 4 school divisions we visited seemed unaware of Education's plans, and 3 of the 4 divisions were developing their own life skills learning resources, potentially duplicating Education's efforts.

> **Recommendation 7:** We recommend that Education work with school divisions to ensure there is a full array of life skills learning resources available for students with special needs.

1.3.3 Purchasing of assistive technology not centralized

A wide variety of assistive technologies can help students with physical, sensory, cognitive, speech, learning or behavioural special needs to more actively engage in learning and achieve their individual learning goals. For example, students unable to read because of physical or learning disabilities can benefit from a text-to-speech software program, where electronic text is read aloud by a computer to a student.

Many devices and software programs are complex. Technical expertise is required to evaluate and select different technology options, and to make the best use of technologies once selected. Officials from 3 of the 4 school divisions we visited expressed concerns about Education's lack of technical support for assistive technology, although Education staff told us they provided this support for all commonly used technologies. Education may need to further clarify the support services available.

Education provided alternative format text in the form of Braille, large print, and electronic text for special needs students. It also worked with The Canadian Association of Educational Resource Centers to obtain inter-library loans of Braille, large print, and audio and digitized materials, free of charge. And it had a limited inventory of assistive technology equipment and software which it lent, on a short-term basis, to rural and northern school divisions. We also noted that school-age children were the primary clients of a not-for-profit organization funded by the Province that provided short-term technology equipment and software loans to Manitobans with speech impairments. In addition, Education led Manitoba's Augmentative and Alternative Communication Working Group, which provided a forum for speech language pathologists from Education, school divisions and various interest groups to share experiences and ideas and learn about new communication technologies.

Purchasing bulk—not single—technology licences can significantly save money. There may also be savings available in more centralized purchasing of assistive technology devices, as well as assistive technology software. Two (2) other provinces had government bodies that coordinated provincial purchases of assistive technologies and provided school divisions and schools with technical support, before and after the purchase. Education did not provide any similar centralized purchasing, although its staff told us they had discussed provincial licensing in the past. Officials from 1 province told us they purchased some software at 70% cost savings, and that suppliers provided more direct technical support once an on-going vendor relationship was established.

Recommendation 8: We recommend that Education investigate the potential cost savings and benefits of centralized purchasing of assistive technology for school divisions.

1.4 Qualifications and staffing levels of school personnel

1.4.1 Mandatory teacher certification, with Manitoba teacher education requiring special education instruction

Education issued teaching certificates that allowed people to teach in Manitoba under section 91(1) of *The Public Schools Act*, which states *"No person is legally qualified to teach or to be employed by a school board as a teacher or principal unless that person holds a valid and subsisting certificate issued by the minister under The Education Administration Act".*

Section 3(2) of *The Education Administration Act* states "*Programs taken by persons in teacher education institutions for the purpose of teacher certification shall be subject to the approval of the minister*". This allowed Education to set undergraduate course requirements for obtaining a Manitoba teaching degree.

Starting September 2008, Education required all provincial undergraduate teacher programs to include 6-credit-hours of instruction related to special education. We reviewed the 6-credit-hour course work developed by 1 university and found it covered:

- Teaching behaviourally challenged children and related classroom management issues
- Supervising educational assistants
- Communicating with parents of special needs children, including mediating differing points of view
- Coordinating actions and plans with outside agencies
- Adapting lesson plans for special needs students.

The Bachelor of Education degree granted in Manitoba also requires at least 24 weeks of student teaching. This may or may not involve teaching students with special needs.

Education certified Canadian teachers from outside Manitoba even if they did not have any special education courses or had less student teaching experience. Under Manitoba's *Labour Mobility Act* and the Labour Mobility section of *The Agreement on Internal Trade* (signed by the federal government and all provincial and territorial governments), a certified teacher from another province or territory must, upon application, be certified in Manitoba without being required to obtain any additional training or experience. To partly compensate, Education sent these people letters encouraging them to take special education courses.

Although the Minister communicated the special education course requirement to Manitoba universities through correspondence in 2008, at the time of our audit Education had not yet reflected this change in the *Teaching Certificates and Qualifications Regulation.* Education officials told us this was because they were also working on other matters falling under this regulation unrelated to special needs education.

1.4.2 Specialty certificates for special education teachers available, but not required

Education issued specialty certificates for special education teachers (such as resource teachers) and special education coordinators. But it did not require people to have these specialty certificates, leaving this decision to school boards' discretion. Education officials told us they wanted to encourage specialty certification, but without causing staffing problems in northern and rural schools.

The Teacher Education and Certification Committee advised the Minister on educational requirements and certification issues for teachers and clinicians. Committee members were appointed by government and included representatives designated by the Manitoba Teachers Society, school trustees, superintendents, parent councils, and deans of education. Committee minutes showed that the Committee had recently discussed the current practice of non-mandatory special education certificates and recommended maintaining the status quo.

1.4.3 Certificate requirements verified and repeal processes in place

Education issued teacher and other certificates after it reviewed applicants' academic records, professional development, and experience under the *Teaching Certificates and Qualifications Regulation* and obtained satisfactory criminal record checks from them. It also verified teacher salary classification.

Education required clinicians employed by school divisions to be certified. Clinician certificates required them to hold appropriate degrees and were conditional until they completed a 3-credit-hour university course, *Legal and Administrative Aspects of Schools for Clinicians*, and 2 years of supervised clinical experience in a Manitoba school.

We examined a sample of 24 certificates to assess if Education officials had adequately verified all requirements before issuing the certificates. We found:

- The combination of educational and professional development requirements were met and verified in all cases

- Experience requirements were met and verified in all but 1 case (1 foreign teacher was certified without knowing if the student teaching experience totalled 24 weeks)
- All required criminal record checks were performed.

Education repealed certificates if teachers were criminally convicted and it had an unwritten agreement with Manitoba Justice for Crown prosecutors to notify it when teachers were charged with criminal offenses. Also, section 41(1)(t) of *The Public Schools Act* required school divisions to report to Education any teacher charged with or convicted of an offense relating to physical or sexual abuse of children.

1.4.4 Special education continuous learning opportunities provided

Education had not mandated post-certification compulsory professional development for teachers. This was consistent with other provinces. Ontario had tried to make teacher professional development mandatory, but was unsuccessful. Other Manitoba professional associations had implemented a requirement to self-report professional development hours, some with a mandated minimum number of hours and some with a related verification process.

Education instead made various professional development courses related to special needs education available to teachers. In 2008/09, it reported that 168 sessions on 49 different topics related to special needs education were provided. These were attended by 4,939 participants from 35 of 37 school divisions. It also provided 47 presentations on Deaf and hard of hearing issues to school staff.

In addition, some school divisions arranged their own special needs training. The 2009/10 professional development calendar for 1 of the larger school divisions in Manitoba had 9 sessions on special education topics. Annual grant funding provided by Education to school divisions included $39-$51 per student (depending on the distance from Winnipeg) for all types of professional development. In 2009/10, the budget for this funding totalled $8.0 million. The Manitoba Teachers Society also periodically provided professional development sessions related to special education.

Education officials felt duplication in special needs professional development efforts was unlikely as their course content and perspective would be unique. They did not monitor or review the professional development sessions on special education topics offered by others.

Education officials decided what courses to offer by considering trends in special needs and inclusive education; their regular interactions with school division personnel; specific requests from school divisions; suggestions made on course evaluation forms; recently released standards, guidelines and other support documents; and previous sessions that could not accommodate the related demand.

1.4.5 No Provincial education requirements or certification for educational assistants

The *Teaching Certificates and Qualifications Regulation* identified certification requirements for all key professional personnel providing direct support to students, but not for the educational assistants providing paraprofessional support. Education allowed school divisions to set their own individual qualification requirements for educational assistants.

At the time of our audit, 3 universities and 2 community colleges in Manitoba offered educational assistant certificate programs. These varied in scope, from a 4-month program to a 17-course program. There was also a not-for-profit organization funded by the Manitoba government offering a 7-month educational assistant internship. In addition, some school divisions had developed and provided their own educational assistant courses and programs.

Education officials did not typically actively monitor any of these educational assistant training programs or provide any direct input to their course requirements. However, 1 Education official sat on an advisory committee for 1 of the college programs to support the development of appropriate programming.

We reviewed job bulletins for educational assistants from 9 school divisions and found that the academic requirements varied from none to "high school or equivalent work experience" to "an educational assistant program certificate". Postings requiring educational assistant certificates did not specify the type of program certificate required, despite the variations in the different programs available. Some school divisions required a specific course, such as WEVAS (*Working Effectively with Violent and Aggressive Students*). In general, urban postings had higher education requirements than rural and northern postings.

Many educational assistants work closely with special needs students and many special needs students spend the majority of their school day with these educational assistants. Several of the stakeholders we interviewed noted the incongruity of having the least trained school staff spend the most time with the neediest students. And some parents told us that the educational assistants assigned to their children were sometimes insufficiently trained to understand their child's disability (such as autism), making it harder for the assistants to fully meet their child's needs.

Learning opportunities for educational assistants varied in the different school divisions we visited. In general, larger divisions provided more learning opportunities (both at the time of initial hiring and on an on-going basis) than smaller divisions. Some school division officials told us that more Provincial coordination and assistance in this area would be welcome; others were content to be left on their own.

Learning opportunities offered by Education were equally available to teachers and other interested school staff, such as clinicians and educational assistants. In addition, Education officials were typically invited to make presentations at the Educational Assistants of Manitoba annual conference. However, Education's professional development calendar did not typically offer any courses specifically developed for educational assistants.

We could not find examples of any other provinces setting or certifying educational assistant qualifications. However, *The No Child Left Behind Act*, enacted in the United States in 2002, requires education paraprofessionals to complete 2 years of study at a post-secondary institution or to be able to show through rigorous assessment the knowledge and ability to perform instructional duties.

Education officials told us that they had discussed providing non-mandatory certification of educational assistants in the past, and decided at that time not to proceed.

> **Recommendation 9:** We recommend that Education provide learning opportunities specifically for educational assistants in its professional development calendar.
>
> **Recommendation 10:** We recommend that Education formally assess the potential benefits and impediments to providing non-mandatory certification of educational assistants.

1.4.6 Awareness of clinician shortages, but no waitlist information

Education recognized that some school divisions, particularly rural and northern divisions, had problems attracting classroom teachers, special education and resource teachers and, in particular, clinicians such as school psychologists and speech language pathologists.

Officials from 1 school division and other stakeholders told us there were sometimes long wait times for clinician assessment services, with some students waiting over a year for assessment. However, Education did not require school divisions to keep or report waitlist information and the school divisions we visited were unable to produce specific waitlist information to support their anecdotal accounts.

Some school division staff told us that creating official waitlists would create problems in managing parent expectations. Students were unofficially prioritized for assessment based on perceived need and those with lesser needs sometimes had to wait a long time for service. And Education officials told us that different clinician waitlists may not be directly comparable as some clinicians focus more exclusively on assessment services, while others provide a broader range of services.

Despite the difficulties, better tracking and monitoring of the number of students waiting for clinician services would allow more evidence-based oversight of access to appropriate educational programming.

> **Recommendation 11:** We recommend that Education work with school divisions to determine if students are receiving timely access to clinician assessment services.

1.4.7 Support provided to respond to clinician shortages

Education worked with stakeholders to try to reduce clinician shortages. Its work with the Student Services Administrators Association of Manitoba helped establish a Masters of Psychology degree program in Manitoba specifically focused on school psychology. And, at the time of our audit, Education was working with the Manitoba Speech and Hearing Association to respond to the shortage of speech language pathologists.

In 2008, Education also began providing up to $25,000 in annual bursary support to rural and northern school divisions having trouble hiring clinicians. This funding was for existing teachers or local students willing to obtain clinician training and give back 1 year of service for each year of bursary support. During the first 2 years, 27 teachers and local students received bursaries. Education officials noted that 5 of 8 recent Masters of School Psychology graduates received these bursaries and were employed in rural school divisions.

School divisions unable to hire clinicians reported that they could usually obtain some clinician services on a consulting basis. In addition, Education staff sometimes helped maintain a minimal level of direct service. At the time of our audit, staff members were providing 2 days a month of speech language services to 2 school divisions as "stopgap" assistance.

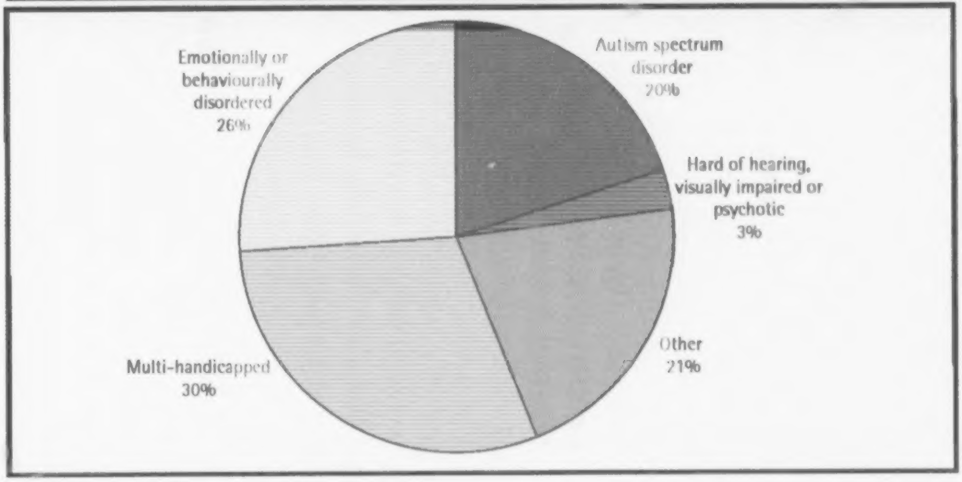
2. Special needs grant funding

2.1 Eligibility criteria and application process

2.1.1 Some eligibility criteria publicly available, but not detailed rules

Education had developed eligibility criteria for assessing applications from school divisions for Level 2 or 3 funding for specific students. There were 7 different categories of need: multi-handicapped; autism spectrum disorder; hard of hearing; severely visually impaired; emotionally or behaviourally disordered; psychotic (Level 2 only); and other (Level 2 only). As **Figure 3** shows, the multi-handicapped, emotionally or behaviourally disordered, and autism spectrum disorder categories accounted for 76% of students receiving student-specific funding of $82.0 million in 2009/10.

Figure 3: 76% of students receiving funding had multi-handicapped, emotional/behavioural or autism special needs



Source: Schools' Finance Branch, Manitoba Education

Education's *Guidelines for Level 2 and 3 Support* document, available to both school divisions and parents on Education's website, listed the criteria Education staff used to determine funding eligibility. The document described the physical, intellectual, and behavioural attributes and support needs of students that would qualify for Level 2 or 3 funding in all the various need categories (except the "other" category, which was simply described with the statement *"Other special conditions can be considered"*). For Level 2 funding, the various attributes were described as "severe" and the adaptations were described as "significant". For Level 3 funding, the attributes were described as "profound" and the adaptations as "extensive".

Education officials used professional judgement and decision tools (which were called rubrics) to guide all funding decisions, other than for the "Level 3 emotionally or behaviourally disordered" category. The rubrics were more detailed than the Guidelines. For example, while the Guidelines showed funding was available for cognitive disabilities, the multi-handicapped rubrics indicated that IQs of 50-70 were associated with Level 2 funding and lesser IQs with Level 3 funding. As a general practice, Education did not share the rubrics with school divisions.

Education approved applications for various funding periods: a single year, multiple years, or for the student's entire remaining school life (which was called maximum funding). Multiple-year and maximum funding approvals were intended to reduce the time and paperwork of the annual funding process. But application forms did not ask school divisions to state a timeframe for requested funding and there were no publicly available criteria for determining funding periods. Education officials told us they approved maximum funding when a student had a lifelong disability and multi-year funding (which was generally to the student's next major transition point, such as the move from primary to middle years) when it seemed likely that a student's support needs would continue beyond 1 year. These criteria were included in the training material that Education provided to student services administrators.

During the 2010/11 school year, Education started a 3-year pilot project with 1 school division. The project suspended the Level 2 special needs application and approval process for individual students and replaced it with a grant based on historical funding levels and total student population. Education officials hoped this would allow school division staff to spend more time planning student supports and less time preparing funding applications. They noted that the information previously required on applications would still need to be gathered to guide programming. We did not assess this pilot project.

> **Recommendation 12:** We recommend that Education make the detailed criteria for determining funding eligibility and funding periods available to school divisions and parents.

2.1.2 Qualified and trained staff assessed initial eligibility

Education staff who reviewed applications all held a Masters degree (at a minimum) and had special education experience as teachers, superintendents, division consultants or clinicians. Education had also developed training documents to help new team members become familiar with the application review process.

Representatives from Education, Justice, the Winnipeg Regional Health Authority, and Family Services and Consumer Affairs jointly reviewed applications for Level 3 funding in the "emotionally or behaviourally disordered" category. Applicants in this category were often involved with 2 or more of these departments and the departmental representatives were often already personally familiar with many of the applicants. Funding decisions were made jointly and by consensus.

2.1.3 Funding applications reviewed for completeness

Funding applications included a template designed to gather information about a student's diagnosis, academic status, school attendance record, physical and intellectual abilities, behaviour, social/emotional concerns, communication skills, social skills, self-management abilities, and support needs, including healthcare needs. School divisions were also required to submit student attendance information.

In a sample of 84 applications, we found that Education officials had judged 20% of them incomplete. In all cases, Education then requested and received supplementary information from the school divisions (such as IQ test results or additional details about behaviour).

2.2 Funding decisions

2.2.1 Funding decisions not adequately explained by rubrics or other documentation

Education officials completed rubrics to guide their decisions for all funding categories except the "Level 3 emotionally or behaviourally disordered" category. The standard rubrics used for most funding categories had boxes with descriptive information about student attributes and adaptations that described support for no funding, Level 2 funding, or Level 3 funding. Education officials checked off boxes based on their review of the funding applications and then used their professional judgement to make a decision. Rubrics for the "other" category had similar boxes with descriptive information about attributes and adaptations, but no indication of whether these supported no funding, Level 2 funding, or Level 3 funding.

We reviewed a sample of 63 completed standard rubrics to see if the boxes checked on the rubrics adequately explained the funding decisions made by Education. Our review did not assess the correctness of the professional judgement exercised in determining which boxes on the rubrics should have been checked off or the correctness of the funding decisions.

In 43% of the rubrics examined, we found that the checked boxes did not adequately explain the level of funding that was granted and there were no further explanations on the rubrics for the decisions made. Of these:

- 30% had boxes checked that equally supported no funding and Level 2 funding
- 11% had boxes checked that equally supported Level 3 and Level 2 funding
- 47% had boxes checked that supported no funding, but Level 2 funding was granted
- 4% had boxes checked that supported Level 2 funding, but Level 3 funding was granted
- 4% had boxes checked that supported Level 3 funding, but Level 2 funding was granted
- 4% had only 1 box on the rubric checked and so were considered incomplete.

The rubrics were simply guides for decision-making. They did not document the professional judgement exercised after checking the boxes.

A further 5% of the rubrics with checked boxes indicating no funding had notes stating funding was being granted "*to consolidate gains*". This reflected Education's practice of providing a transition year before withdrawing or decreasing previous funding levels. In 2009/10, 37 students received transition funding totalling $419,055 to consolidate previous gains.

The boxes on the rubrics used to assess applications in the "other" category did not indicate if student attributes were severe or profound, or whether the adaptations required were significant or extreme. We therefore could not determine if the checked boxes were consistent with the level of funding granted. There was no other documentation kept of the professional judgement exercised or the rationale for these funding decisions.

The interdepartmental committee members reviewing applications for Level 3 funding in the "emotionally or behaviourally disordered" category completed a checklist indicating all application information had been received and the overall quality of a submitted Circle of Care plan considered. Education recommended these plans for all students with complex or intense needs that required coordinated involvement from multiple service providers and Education officials told us they followed up with service providers whenever the Committee felt a plan required significant improvement in order to adequately support a student. Some discussions about the plans and rationales for funding were documented, but these did not always adequately explain the funding decisions made.

Education officials approved about 90% of the funding applications we reviewed for more than a single year of funding. However, they did not document any rationale for the funding periods approved. We reviewed 28 applications approved for remainder-of-school-life funding. Of these, 1 was a student who attended school only a handful of days each term in the past year (although an attendance plan was being developed for the upcoming year) and 3 did not have sufficient evidence of lifelong disabilities requiring such continuous long-term support. In 1 case, funding was approved before the student started kindergarten.

> **Recommendation 13:** We recommend that Education clearly document in their files the logic and rationale for all individual special needs funding decisions, including the justification for providing, altering, or denying the funding requested by a school division, and the reason for the selected funding period.

2.2.2 Quality assurance process not linked to size of financial decisions

All applications (except those jointly reviewed by the inter-departmental committee) were reviewed at least once. If requested funding was denied or lowered to Level 2 from Level 3 by the first reviewer, a different reviewer performed a second review. If the two reviews produced different results, the team leader would make a final decision. The team leader also briefly reviewed all applications with completed rubrics.

The secondary review requirement and the thoroughness of the team leader review were not linked to the amount of money involved. Up to $308,760 (maximum or remainder-of-school-life funding for a kindergarten student) could be approved without a second detailed review.

> **Recommendation 14:** We recommend that Education ensure that all significant financial decisions for individual students receive additional review before approval.

2.2.3 Verification of application information evolving, but needs further attention

We expected Education to have processes in place to verify the validity of the information submitted on application forms. This would include verifying school attendance; the diagnosed conditions, learning issues, and behavioural issues described; and the adaptations and supports listed as needed. It would also include periodic verification that circumstances remained unchanged when multi-year or remainder-of-school-life funding was approved.

Education required school division student services administrators and school principals to sign application forms, verifying that the information being provided was correct. We found that all applications reviewed as part of our audit had been properly signed.

Education also required school divisions to submit attendance reports so it could verify that students applying for special needs funding were attending school at least 70% of the time. If attendance was below 70% without a reasonable explanation, Education officials required a plan for improving attendance. We examined 11 applications where attendance was below 70% and found that they either had reasonable explanations for the poor attendance (such as a significant number of medical appointments), plans for improving attendance, or notes that an attendance plan was currently being developed. Education also used school enrolment records to ensure that students were enrolled in the division before disbursing funding each fall.

While the results of various assessment tests were often stated in applications, Education did not verify this information as part of the application review process. Education officials did not require copies of clinician reports to be submitted with applications because of privacy concerns related to *The Personal Health Information Act*.

All students receiving Level 2 or 3 funding were required to have individual education plans. But, unlike the Circle of Care plans that had to be submitted when applying for Level 3 funding in the "emotionally or behaviourally disordered" category, these individual education plans did not have to be submitted as part of the application process.

In 2010, Education pilot-tested a post-funding review process in 3 school divisions (including an urban, a rural, and a northern division). Under this process, Education officials intended to eventually visit all school divisions once every 3 years to review a sample of funded students. The review was designed to be very collaborative in noting strengths and potential improvements. Education officials spent about half a day at each school selected for review. During the visits, they:

- Viewed the students in the school setting
- Confirmed on-going attendance
- Confirmed that student files included individual education plans
- Provided a forum for general discussion with school division and school staff about programming, services, and supports for special needs students.

The total number of students selected for the pilot review in each school division was based on the total time available, rather than on the underlying risk. Education officials then selected individual students by considering each school division's special needs profile and the students most likely to be at risk of not having their special needs met.

We reviewed Education's reports and notes from the pilot visits and found instances where Education officials were concerned that the funding levels and funding periods in place appeared inconsistent with their observations of a student's attributes and needs. Education officials told us that they intended to follow-up these concerns during the next application review period, including cases with multi-year and remainder-of-school-life funding (where an annual application would not normally be received).

The review process did not consider if the students' individual education plans complied with standards and guidelines, or if the students were receiving adequate supports. We noted a similar review process in another province assessed compliance with policies and guidelines, identified students no longer eligible for the funding being received and students being underfunded, and adjusted funding levels accordingly.

We compared the information provided in 70 Level 2 and 3 funding applications for the 2009/10 school year to other information in the students' school files, including past and current clinical assessments, individual education plans, and progress reports. Sixteen percent (16%) of the files had information inconsistent with the information in the application forms, such as inconsistent descriptions of behaviour. Of these, 45% had information inconsistent at the time the application was submitted (such as a report card inconsistent with a funding application, as previously described in section 1.2.2) and 55% had information indicating that student behaviour had improved or the level of supports had diminished since the time of the application. In cases where the files did not reflect the student supports described in the applications (such as specialized equipment), we could not tell if this was a file documentation issue or an indication that the supports described in the funding applications were not being provided.

School divisions reported attendance information annually, but did not have to annually confirm that circumstances remained unchanged in cases where Education had approved multi-year or remainder-of-school-life funding. In 1 case, a school division failed to notify Education when its reassessment of a student's hearing showed the student was no longer eligible for the remaining 3 of 4 years of funding approved. Education only became aware of the situation when the school division re-applied for the same student in a new category in the fifth year. It did not consider the student eligible in the new category, but nonetheless approved 1 final year of funding to consolidate gains.

Recommendation 15: We recommend that Education refine its post-funding review process by:

- Determining the number of post-funding student reviews to be conducted based on an assessment of the underlying risk
- Reviewing student files (in addition to observing students and holding discussions with school personnel) to verify and update application information
- Assessing if individual education plans reviewed during post-funding reviews meet Provincial regulations, standards and guidelines
- Ensuring prompt follow-up of all potential over- or under-funding situations.

Recommendation 16: We recommend that Education annually require school divisions to report any changes, or confirm that circumstances remain unchanged, for all students receiving multiple or maximum year funding.

3. Performance information and reporting

3.1 Information for management purposes

3.1.1 Limited financial and operational information and analysis

Because spending on special needs grants is significant ($82.0 million in 2009/10), we expected Education to regularly compile and analyze the grant funding approved in various funding categories. We also expected that it would require school divisions to submit detailed financial and operational information showing how they were spending the funding for special needs education and the results being achieved.

Education could sort and analyze the grant funding it approved, but did not routinely do so. At our request, it calculated the dollar value of future years' commitments resulting from its approval of multi-year and remainder-of-school-life funding. As of February 2011, this commitment totalled $389.2 million for the 2011/12 through 2026/27 school years.

In response to a specific media inquiry, Education determined that it had approved $5.5 million of grant funding to help 505 individual students with Fetal Alcohol Spectrum Disorder (FASD) for the 2010/11 school year, even though FASD was not 1 of the 7 stand-alone categories of funding. Education officials could do this because there were 20 different detailed description codes on the funding rubrics. For example, there were codes for tracking the number of special needs students with Attention Deficit Hyperactivity Disorder (ADHD), in a wheelchair, in care of Child and Family Services, and with diagnosed genetic conditions, such as Tourette's syndrome. This information was valuable as it supplemented wide-ranging funding categories, such as "multi-handicapped" or "other". However, Education did not collect this information for funding decisions made without rubrics. And Education did not typically extract and analyze this information to identify trends that could assist with program planning. For example, identifying an increase in the number of ADHD students might lead Education to develop an ADHD support document.

Education's accounting system for school divisions (known as FRAME – Financial Reporting and Accounting for Manitoba Education) tracked the total spending by all school divisions funded through both Provincial grants and school division levies. In the student support services category, the 3 sub-categories most related to students receiving Level 2 and 3 funding were as follows:

- Clinical and related services (although clinician costs were for all students)
- Regular placement: defined as all personnel (excluding classroom teachers) and other costs for supporting special needs students in a regular classroom setting
- Special placement: defined as all teaching and instructional support costs for activities outside the regular classroom for students with special needs.

In 2009/10, total Provincial public school spending in these 3 categories was as follows:

- Clinical and related services: $36 million
- Regular placement: $118 million
- Special placement: $51 million.

However, FRAME costs were not sufficiently detailed to track the total costs and numbers of educational assistants, resource teachers, different types of clinicians, or assistive technology devices. This greater level of detail would make it easier for Education to identify and then respond to issues and trends. It would also provide better information for making decisions about the adequacy of the grant funding levels.

School division planning reports, required to be submitted to Education once every 3 years, had more detailed information on the different categories of school personnel than FRAME reports. However, school divisions were not all reporting on the same 3 year cycle and Education did not regularly compile or analyze this data.

School divisions also provided information to Education showing the high school students with modified and individualized programs. Education did not compile or analyze this data and did not receive any similar information for primary and middle year students.

Education tracked the number and types of its consultations with school divisions and schools, and the number and types of professional development offerings. But it did not set targets to measure this information against.

Some other provinces also collected and analyzed the following types of information:

- The number of classrooms with 0, 1, 2, 3, and 4 or greater students entitled to an IEP, by various grade levels
- The number of classrooms with assigned educational assistants
- Feedback on the level of satisfaction with special needs services and their accessibility (from periodic parent and school staff surveys).

> **Recommendation 17:** We recommend that Education improve its special needs financial and operational information and analysis by:
> - Tracking future year funding commitments
> - Applying description codes to all funding applications and regularly compiling and analyzing this data
> - Regularly gathering information on the numbers and costs of educational assistants, resource teachers, different types of clinicians, and assistive technology devices.

3.1.2 Insufficient information on outcomes being achieved

One of the stated objectives of Education's Program and Student Services Branch was to maximize the outcomes being achieved for students with special needs (which was consistent with its objectives for all students). We therefore expected Education to set targets and regularly measure progress in the outcomes these students were achieving. But Education had not set provincial targets or asked school divisions to set divisional targets. Nor had it asked school divisions to collect and report information on the outcomes being achieved.

Education had recently begun collecting information that would allow it to track all students graduating with high school diplomas or certificates of completion (for those not following a standard curriculum). It was also working with Advanced Education and Literacy to develop a process to track the number of students entering post-secondary institutions after completing high school. But Education was not compiling any information specifically related to Level 2 and 3 students. It did not track outcomes for special needs students separately from outcomes for all students.

Some other provinces set targets and tracked information such as:

- The numbers of students with special needs writing standardized provincial tests and their results
- The number of students with special needs graduating with high school diplomas or certificates of completion (for those not following a standard curriculum)
- The number of expected learning outcomes met for students on an ungraded curriculum
- The number of students with special needs transitioning to post-secondary institutions.

> **Recommendation 18:** We recommend that Education work with school divisions to develop methods of monitoring the outcomes being achieved for students with special needs.

3.2 Public reporting on special needs education

3.2.1 Better public performance information needed

Because Education had only limited information available for its own internal management purposes, its public reporting on special needs education was similarly limited. Most provinces that collected and analyzed more detailed data, particularly on outcomes being achieved, publicly reported this information. In general, Manitoba reported less information on the outcomes being achieved for all students than several other provinces.

One province publicly reported on the results of its monitoring of school divisions. It reviewed student files to assess if school divisions were complying with provincial standards for students with special needs and then disclosed the percentage of files in compliance in a number of specific areas.

Manitoba published FRAME data annually. However, as section 3.1.1 notes, it was insufficient to determine the total costs and numbers of educational assistants, resource teachers, different types of clinicians, or assistive technology devices.

In 2008, Manitoba publicly reported the total number of students receiving Level 2 and 3 funding, as part of a 5-year Statistical Profile report. This provided information similar to that shown in **Figures 1 and 2** in the Background section of this report. Education officials told us that the Strategic Profile report would be updated, but that there was no firm date regarding its release.

Good public performance reporting is fundamental for accountability to the Legislature and Manitoba citizens. Without it, they cannot assess if Education is meeting its goal of maximizing the outcomes being achieved for special needs students, or if it is doing so cost-effectively.

> **Recommendation 19:** We recommend that Education provide public performance information on its student-specific grant funding for students with special needs, including information on enrolment, associated costs, and the outcomes being achieved for these students.

Response of officials and summary of recommendations

Education supports and accepts the Auditor General's recommendations and will continue to refine services to ensure students with special needs in Manitoba receive appropriate educational programming, including compliance with legislation, financial accountability, and transparency.

Education's Philosophy of Inclusion states:

> *"Inclusion is a way of thinking and acting that allows every individual to feel accepted, valued, and safe. An inclusive community consciously evolves to meet the changing needs of its members. Through recognition and support, an inclusive community provides meaningful involvement and equal access to the benefits of citizenship.*
>
> *In Manitoba, we embrace inclusion as a means of enhancing the well-being of every member of the community. By working together, we strengthen our capacity to provide the foundation for a richer future for all of us."*

Education works in partnership with schools, families and communities to achieve this goal.

The Amendment to The Public Schools Act: Appropriate Educational Programming in 2005 was made with broad public input, and provides a legislative framework for school divisions in providing programming for students with special needs. Included in the regulation is a means for parents to resolve disputes in respect to programming or placement for students who have Individualized Educational Plans.

Education works collaboratively with school divisions to ensure compliance with both the regulations and the *Standards for Student Services*. The role of Education in the educational programming for students with special needs is not only to ensure compliance, but also to work with schools, families and service providers to build local capacity to meet the needs of diverse learners.

Supporting the quality of special needs education

Recommendation 1: We recommend that Education improve the organization of its website information to make it more user-friendly for parents of students with special needs.

> ***Response:*** This recommendation is currently being addressed. The website was reviewed in the spring of 2011 and updated to make it more user-friendly for parents and more accessible for persons with disabilities.

Recommendation 2: We recommend that, as part of its broader consultation process, Education consult more regularly with representatives of educational assistants when it develops or updates standards, guidelines or support documents that may affect educational assistants' delivery of services to students with special needs.

> ***Response:*** Education will ensure that educational assistants, as well as other educational stakeholders, are consulted as appropriate.

Recommendation 3: We recommend that Education work with school divisions to develop processes to monitor and periodically verify the level of school division compliance with special needs education regulations, standards and guidelines.

> ***Response:*** Education will increase the focus on compliance in its existing monitoring processes, including:
>
> - A 3 year cycle of review under the Planning in Education and Categorical Grant Review
> - As of the 2010/11 school year, a Review and Reporting Process that follows up on a sample of students who receive Special Needs Funding
> - Follow-up with individual school divisions in response to issues brought to the attention of the Department
> - Investigation and recommendations as a result of a Formal Dispute Review
> - Follow-up in response to Human Rights inquiry or hearing recommendations.

Recommendation 4: We recommend that Education work with school divisions to improve the level of compliance with the regulations, standards and guidelines for individual education planning, and to further develop the quality of expected learning outcomes and progress reporting.

> ***Response:*** This recommendation is currently being addressed. Education will continue to work with school divisions to implement the regulation, standards and guidelines specifically related to the Individual Education Plan (IEP) process. The IEP process is at the basis for all the professional learning provided by Education for school division staff. The reporting of achievement to parents is a priority and Education is working with school divisions to improve reporting processes.

Recommendation 5: We recommend that Education further clarify what constitutes allowed paraprofessional duties and communicate this guidance to school divisions and other stakeholders.

> ***Response:*** This recommendation is currently being addressed. The document *Education Assistants in Manitoba Schools* outlines responsibilities for educators and educational assistants and Education continues to work with school divisions to improve the understanding of the duties.

Recommendation 6: We recommend that Education work with school divisions to ensure the public has easily accessible and complete information on programming options at all locations.

> ***Response:*** Education will work with school divisions to ensure that accessible and complete information for parents is available on local programming options.

Recommendation 7: We recommend that Education work with school divisions to ensure there is a full array of life skills learning resources available for students with special needs.

> ***Response:*** This recommendation is currently being addressed. Family Services and Consumer Affairs are leading a working group called: "Preparing Youth in Care for Independent Living Training Curriculum Working Group". The modules will be made available to school divisions as well. Target date for initial drafts of the learning modules is December 2011.

Recommendation 8: We recommend that Education investigate the potential cost savings and benefits of centralized purchasing of assistive technology for school divisions.

> *Response:* Education will continue to investigate potential cost savings, such as options for provincial licencing of software. Education has purchased equipment that is made available to school divisions through the Special Learning Equipment loan process which allows teachers and clinicians the opportunity to try expensive equipment before purchasing. The equipment available supports educational programming for students who have sensory, physical and learning disabilities.

Recommendation 9: We recommend that Education provide learning opportunities specifically for educational assistants in its professional development calendar.

> *Response:* Learning opportunities offered by Education are open to educational assistants as well teachers and school divisions ensure that educational assistants are included as appropriate. Learning opportunities for educational assistants are often focused on training that is specific to an individual or group of children and Education will respond to requests to provide this type of training. Education has been a presenter at the annual Educational Assistants of Manitoba workshop.

Recommendation 10: We recommend that Education formally assess the potential benefits and impediments to providing non-mandatory certification of educational assistants.

> *Response:* The Teacher Education Certification Committee (TECC) will formally assess the benefits and impediments of providing non-mandatory certification of educational assistants.

Recommendation 11: We recommend that Education work with school divisions to determine if students are receiving timely access to clinician assessment services.

> *Response:* This recommendation is currently being addressed as part of the Clinical Outcomes project. Work is currently underway with school divisions to develop processes locally to better manage caseload and track wait lists at the division level. Education collaborates with rural and northern school divisions to develop processes to manage clinical services.

Special needs grant funding

Recommendation 12: We recommend that Education make the detailed criteria for determining funding eligibility and funding periods available to school divisions and parents.

> *Response:* Education will increase the information sessions for school division staff and parents. Education staff currently meet with school division administrators annually to review criteria and the criteria are also posted on the Program and Student Services website. Education will work closely with school divisions and parent organizations to ensure that parents have accurate information.

Recommendation 13: We recommend that Education clearly document in their files the logic and rationale for all individual special needs funding decisions, including the justification for providing, altering, or denying the funding requested by a school division, and the reason for the selected funding period.

> *Response:* The Funding Review Team has, as of the fall 2011, taken steps to enhance their documentation of the funding decisions.

Recommendation 14: We recommend that Education ensure that all significant financial decisions for individual students receive additional review before approval.

> *Response:* As of fall 2011, 2 funding review team members sign-off on a funding period greater than 4 years. All significant funding decisions are also reviewed and signed-off by the co-leads before results are sent to the school division.

Recommendation 15: We recommend that Education refine its post-funding review process by:

- **Determining the number of post-funding student reviews to be conducted based on an assessment of the underlying risk**
- **Reviewing student files (in addition to observing students and holding discussions with school personnel) to verify and update application information**
- **Assessing if the individual education plans reviewed during post-funding reviews meet Provincial regulations, standards and guidelines**
- **Ensuring prompt follow-up of all potential over- or under-funding situations.**

> ***Response:*** First bullet: The Funding Team indicates "visit" when processing an application for a student that may be at risk. Before conducting a Review and Reporting process on a school division, all applications with "visit" noted are included in the review.
>
> Second bullet: Education will work with school divisions to explore ways in which student files will be included in the Review and Reporting process.
>
> Third Bullet: The Review and Reporting process has been amended to include a review of the IEP.
>
> Fourth Bullet: Efforts will be made to ensure the Funding Review Team members continue to regularly contact parents and school divisions and to promptly as possible follow-up on all over-or-under-funding situations that are brought to our attention.

Recommendation 16: We recommend that Education annually require school divisions to report any changes, or confirm that circumstances remain unchanged, for all students receiving multiple or maximum year funding.

> ***Response:*** School division accountability for reporting changes has been further enhanced through the Review and Reporting process which began fully in 2010/11. This is in addition to the already required school divisions Fall and January additions/deletions reporting process. For the 2012/13 school year a statement/declaration (with a signature) will be added to the annual attendance reports that school divisions submit.

Performance information and reporting

Recommendation 17: We recommend that Education improve its special needs financial and operational information and analysis by:

- **Tracking future year funding commitments**
- **Applying description codes to all funding applications and regularly compiling and analyzing this data**
- **Regularly gathering information on the numbers and costs of educational assistants, resource teachers, different types of clinicians, and assistive technology devices.**

> ***Response:*** Education will develop a more detailed compilation of future year commitments and approaches to compiling and analyzing data related to funding description codes. A more detailed descriptor of the numbers and costs will be investigated as part of the current reporting process used by school divisions in both FRAME and the Planning in Education Initiative.

Recommendation 18: We recommend that Education work with school divisions to develop methods of monitoring the outcomes being achieved for students with special needs.

> ***Response:*** Improved processes for reporting to parents on student outcomes contained within IEPs are being explored as part of the development and pilot of a provincial report card.

Recommendation 19: We recommend that Education provide public performance information on its student-specific grant funding for students with special needs, including information on enrolment, associated costs, and the outcomes being achieved for these students.

> ***Response:*** Education is exploring ways to include information on areas such as attendance, grade achievement/credits and graduation in the "A Profile of Student Learning and Performance in Manitoba" publication.

Chapter 7

Taxation Division, Audit Branch

Department of Finance

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Main points

What we examined

One of the responsibilities of the Taxation Division in the Department of Finance (the Department) is to make sure that taxes owing to the Manitoba Government are properly paid. The Department's Audit Branch (the Branch) conducts audits under provincial tax laws to ensure proper payment of taxes and promote voluntary taxpayer compliance. The provincial tax laws include Retail Sales Tax, Health and Post Secondary Education Tax Levy, Corporation Capital Tax, Gasoline Tax, Motive Fuel Tax, Tobacco Tax and Mining Tax.

We examined the Branch's audit selection process, use of performance targets, actions to detect unreported taxable business activity and their overall practices for conducting audits. Our procedures were limited to the examination of file documentation on hand in the Branch, rather than a re-verification at taxpayers' premises.

Why it matters

Tax revenue under these provincial tax laws totaled over $2.6 billion for the year ended March 31, 2011. Despite the need for voluntary taxpayer compliance, audits are also necessary to identify taxpayers who don't comply with the tax laws. Compliance with the legislation ensures that taxpayers are treated equitably and that tax revenues are available to deliver necessary public services. For the 2010/11 year, the Branch found $34 million in taxes owed.

What we found

The Branch does many of the right things. Specifically it:

- Identified more taxes (tax recoveries) than it cost to operate, generating $5 of revenue for each $1 of operating expenses
- Used targeted risk factors to select taxpayer files for audit
- Set performance targets for tax recoveries per audit hour and the number of audits to be done each year
- Used an audit process consistent with generally accepted assurance standards
- Correctly determined and adequately supported the audit findings (tax assessments) in audit files.

But the Branch can improve its operations and may find more unreported taxes by implementing our recommendation to estimate the tax revenue lost due to unreported taxable business activity in Manitoba, analyze which economic sectors are more susceptible to such activity and use this analysis in planning how to detect unreported taxable business activity.

Background

The Audit Branch lists the following responsibilities in the Department's annual report:

- Conducts audits under provincial tax laws to ensure proper payment of taxes and promote voluntary taxpayer compliance. Provincial tax laws include Retail Sales Tax, Health and Post Secondary Education Tax Levy, Corporation Capital Tax, Gasoline Tax, Motive Fuel Tax, Tobacco Tax and Mining Tax
- Conducts audits for compliance with the International Fuel Tax Agreement
- Develops policies and procedures for audits and investigations
- Trains and develops audit and investigation staff
- Develops policy options and possible amendments to provincial tax laws, analyzes the impacts of changes the government is considering and implements the changes once approved. It also provides an information service to taxpayers and the public on tax interpretations.

Previously unreported taxes owed to the Manitoba Government are referred to as "tax recoveries revenue". Historically, the majority of tax recoveries revenue comes from audits of taxpayer returns for Retail Sales Tax (RST) and Health and Post Secondary Education Tax Levy (HET).

Figure 1 shows the Audit Branch's tax revenue (recoveries) and expenses. It also shows that the total 2010/11 tax recoveries of $33.8 million compared to the $7.3 million in costs for the Branch, results in a $5 to $1 ratio of recoveries to expenses.

Figure 1: Recoveries exceeded branch costs ($ millions)

Revenue from completed audits and expenses	2006/07	2007/08	2008/09	2009/10	2010/11
Audit recoveries (gross revenue)	$ 24.3	$ 35.2	$ 30.9	$ 35.3	$ 33.4
Investigations recoveries/fines (gross revenue)	.6	.3	.7	.5	.4
Total revenue	**$ 24.9**	**$ 35.5**	**$ 31.6**	**$ 35.8**	**$ 33.8**
Salaries and employee benefits	$ 5.6	$ 6.0	$ 6.1	$ 6.5	$ 6.4
Other expenditures	1.1	1.0	1.0	1.0	.9
Total expenses	**$ 6.7**	**$ 7.0**	**$ 7.1**	**$ 7.5**	**$ 7.3**
Ratio of audit recoveries (revenue) to operating costs (expenses)*	**4:1**	**5:1**	**4:1**	**5:1**	**5:1**

Source: Department of Finance Annual Reports-Taxation Division, Audit Branch
* Calculated by the Office of the Auditor General (rounded to nearest whole number)

Figure 2 shows the breakdown of those revenues by tax law.

Figure 2: Audit branch revenue (recoveries) generated by tax law ($ millions)

Audit recoveries identified	2006/07	2007/08	2008/09	2009/10	2010/11
Retail Sales Tax	$ 20.0	$ 29.0	$ 21.6	$ 28.5	$ 27.3
Health and Post Secondary Education Tax Levy	3.9	4.8	5.2	6.3	4.2
Others	.4	1.4	4.1	1.0	2.3
Total revenue	**$ 24.3**	**$ 35.2**	**$ 30.9**	**$ 35.8**	**$ 33.8**

Source: Department of Finance-Taxation Division, Audit Branch

Figure 3 shows the Government's total revenue from those tax laws for the 2007 to 2011 fiscal years.

Figure 3: Tax revenue ($ millions)

Tax revenue	2006/07	2007/08	2008/09	2009/10	2010/11
Retail Sales Tax	$ 1,277	$ 1,391	$ 1,486	$ 1,570*	$ 1,618
Health and Post Secondary Education Tax Levy	318	341	357	264**	269**
Others	775	787	717	617	671
Totals	**$ 2,370**	**$ 2,519**	**$ 2,560**	**$ 2,451**	**$ 2,558**

Sources: Public Accounts Annual Reports (Volume 1) and Department of Finance

* Retail Sales Tax figures include the former separate tax on utilities purchased for commercial use

** Health and Post Secondary Education Tax Levy (HET) figures exclude HET paid by entities in the Government's Reporting Entity other than government business enterprises

Descriptions of Tax Statutes[1]

The Retail Sales Tax Act

This Act levies a tax on certain services and goods purchased in Manitoba, goods manufactured for own use or brought into the province for consumption. The tax rate of 7% is calculated on the retail-selling price excluding the Goods and Services Tax. Exemptions are provided for basic groceries, children's clothing and footwear up to $150 per item, prescription drugs, farm implements and manure treatment and handling equipment, books, toll free line charges, commercially operated aircraft, custom developed software and custom computer programming, geophysical survey equipment, drill rigs and well-servicing equipment used in oil and gas exploration and development and for certain other items.

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[1] Source: Department of Finance Annual Reports and Tax Bulletins

The Health and Post Secondary Education Tax Levy Act

This Act imposes a tax on an employer's total annual gross remuneration paid to their employees. Employers whose total annual gross remuneration paid to their employees is less than $1,250,000 are exempt from paying the levy (associated corporations are required to share the exemption). Employers whose total annual gross remuneration paid to their employees exceeds $1,250,000 but is less than $2,500,000 pay tax on the portion over $1,250,000 at a rate of 4.3%. Employers whose total annual gross remuneration paid to their employees exceeds $2,500,000 pay tax at a rate of 2.15%.

The Corporation Capital Tax Act

This Act levies a tax on the paid up capital of a corporation. Paid up capital is generally represented by capital stock, surpluses, reserves, loans and indebtedness of the corporation.

For fiscal years beginning after December 31, 2010, the corporation capital tax is eliminated for all corporations except banks, trust and loan corporations, and crown corporations. The tax rate for crown corporations is 0.5% of the taxable paid up capital. The tax rate for banks, trust and loan corporations is 3% of the taxable paid up capital. Effective for fiscal years ending after April 12, 2011, banks, trust and loan corporations with taxable paid up capital under $4 billion are exempt from the tax.

The tax rate for fiscal years beginning after January 1, 2010 (to December 31, 2010) was 0.2% for corporations with taxable paid up capital greater than $21 million. For taxable paid up capital between $20 million and $21 million, tax was 2.2% of the total paid up capital greater than $20 million. Banks, trust and loan corporations were taxed based on their shareholder equity and subordinated debt at a rate of 3%.

The Gasoline Tax Act

This Act imposes a per litre tax on all purchases of gasoline, gasohol, aviation gasoline and propane subject to certain exemptions (tax exempt fuel eligible for farming, fishing, trapping, logging and the cargo component of international aircraft flights).

The Motive Fuel Tax Act

This Act imposes a per litre tax on all purchases of petroleum products used in the operation of an internal combustion engine or for commercial heating, that are not taxable under *The Gasoline Tax Act*, subject to certain exemptions (tax exempt fuel eligible for farming, fishing, trapping, logging, segments of the mining industry, domestic home heating and international ocean going vessels).

Manitoba produced bio-fuel was exempt from both *The Retail Sales Tax Act* and *The Motive Fuel Tax Act* for a 5-year period ended March 31, 2011. The Taxation Administration branch administers the International Fuel Tax Agreement (IFTA) whereby truckers licensed in Manitoba are allowed to file a tax return which accounts for all jurisdictions travelled. The branch is responsible for verifying the returns and either issue recovery notices or refunds to other IFTA member jurisdictions.

The Tobacco Tax Act

This Act imposes a tax on the purchase of cigarettes, fine cut tobacco, cigars and other tobacco products.

The Tax Administration and Miscellaneous Taxes Act

Part 1 contains the consolidation of the general administration and enforcement provisions for the statutes administered by the Taxation Division.

The Mining Tax Act

This Act imposes a tax on the profits of mining operations.

Audit approach

Audit objective

We examined the Branch's audit function to ensure that significant occurrences of additional taxes owed are identified in a timely manner. This included an examination of the Branch's audit selection process, use of performance targets, actions to detect unreported taxable business activity and their overall practices for conducting audits.

Audit scope

The audit was conducted between October 2010 and July 2011. Our audit was performed in accordance with the value-for-money auditing standards recommended by The Canadian Institute of Chartered Accountants and, accordingly, included such lists and other procedures as we considered necessary in the circumstances.

We examined 30 completed tax audit files, and reviewed related Audit Branch policies and procedures. We also held discussions and/or interviews with the Director, Assistant Director and some of the Managers and Supervisors of Audit Branch.

We selected tax audit files from those completed between April 1 and October 31, 2010, related to compliance with *The Retail Sales Tax Act*, and *The Health and Post Secondary Education Tax Levy Act* (provincial tax statutes). The tax audits may have started before the beginning of or during the 2010/11 fiscal year and were completed by October 31, 2010.

The tax audit files examined did not include any files from the Investigations unit of Audit Branch. We also did not examine any tax audit files related to the audit of taxpayer returns/accounts for compliance with *The Corporation Capital Tax, Gasoline Tax, Motive Fuel Tax, Tobacco Tax, or Mining Tax Acts* or the International Fuel Tax Agreement. We limited our examination of Audit Branch's quality control function to a comparison with the performance standards for quality control as recommended by the Canadian Institute of Chartered Accountants. Our procedures were limited to the examination of file documentation on hand in the Branch, rather than a re-verification at taxpayers' premises.

Audit findings and recommendation

1. Maximize tax recoveries

For each tax statute, we expected that taxpayers should be selected for audit based on the assessed risk of fraud or error in the reported taxes as well as the significance of the potential tax recoveries.

1.1 Audit file selection process was risk based but weighting of risk factors could be enhanced

Audit Branch uses a risk based process to identify taxpayer accounts for audit. Risk factors increase the likelihood of errors in the reported taxes and can stem from past audit history and other information gathered about individual taxpayers. Due to the sensitivity of this information, we are not able to disclose specific risk factors. We were unable to review any documentation of the selection and prioritization of files (taxpayer accounts) for audit because the Branch did not retain it.

For the 2011 fiscal year, the Branch summarized the average recoveries per audit hour by audit plan (targeted risk factor) for Retail Sales Tax (RST) and Health and Post Secondary Education Tax Levy (HET) audits conducted from 2006 to 2010. They indicated that there were no significant trends in their analysis. However, the Branch also indicated that they noted from their analysis which targeted risk factors produced high recoveries and gave them priority in the audit selection process.

Using the Audit Branch's data for 2006-2010, we did the following analysis:

- We identified which types of audits (targeted risk factors) produced the 5 largest average recoveries per audit hour in each of the 5 years. Then we counted how many times the same type of audit (the same targeted risk factor of the 10 different risk factors in RST audits and the 11 different risk factors in HET audits) was in the top 5 recoveries per audit hour over that period. For RST audits, we found 6 types (6 of the 10 risk factors) were present in 3 of the 5 years; 2 of the 6 types were found in both 2009 and 2010. For HET audits, 4 types (4 of the 11 risk factors) were present in 3 of the 5 years and those 4 types were also common in both 2009 and 2010.
- We noted that for RST audits, the tax recoveries associated with the types of audits (targeted risk factors) in the 5 largest recoveries per audit hour accounted for at least 40% of the total recoveries (dollars) generated in 3 of the 5 years. For HET audits, the tax recoveries associated with the types

of audits (targeted risk factors) in the 5 largest recoveries per audit hour accounted for at least 50% of the total recoveries generated in 4 of the 5 years.

Our analysis shows that the selection of the type of audit (targeted risk factor) affects the likely tax recoveries (dollars) per audit hour. It also shows that ranking the selection of audits based on the type of audits that produced the greater recoveries per audit hour in recent years may increase total tax recoveries (dollars) generated by audits. And that the use of trend analysis may assist in the selection of audits that will maximize the total annual tax recoveries (revenues).

We urge the Branch to consider further analyzing annually the tax recoveries by risk factors and use that data analysis (including trends) in the audit file selection process to maximize tax recoveries. We also urge the Branch to keep documentation of management's review and approval of the selection and prioritization of files for audit.

1.2 Performance targets were set but were limited

Audit Branch's performance targets are based on activities and outputs. These targets are used for internal management and monitoring purposes and only the number of audits completed during the year is publicly reported. Audit and Audit Review units' performance measures were as follows:

- The activities target is the percentage of work [time] spent on audits, which excludes non-work time such as vacation, sick leave and statutory holidays.
- There are 2 output related targets, which are the annual number of audits completed and the percentage increase in the number of audits completed over the prior year.

Audit Branch met its activities and output related targets for 2010/11.

The output targets for 2010/11 were based on the actual number of audits completed in 2009/10, and also reflected vacancies and auditors' past performance.

In comparison, the Government of Alberta uses a recoveries-to-expenses ratio as a performance measure (2010/11 annual report, Ministry of Finance), but it also includes the cost of collection activities in its calculation of expenses. British Columbia, for 2009/10 (annual report, Ministry of Finance), set an annual amount of incremental tax revenue to be identified through audit and compliance activities as its performance target. Saskatchewan, for 2008/09 (annual report, Ministry of Finance), set the annual number of audits to be performed as a performance target.

In Manitoba, comparing the total 2010/11 tax recoveries (receivables recorded) of $33.8 million to the $7.3 million expenses results in a $5 to $1 ratio of recoveries to expenses. While this ratio is not used as a performance target, it is relevant that Audit Branch identifies more tax recoveries than it costs to perform the audits.

The Branch also sets a targeted range of average recoveries per audit hour as a performance measure. The performance measure is calculated based on the tax recoveries identified in completed audits and the related audit hours spent. They also had a target for the number of audits to be completed. An audit is considered complete when the audit recoveries identified are recorded in the accounting system as an accounts receivable. This record is made generally when the taxpayer has agreed to the tax audit findings (tax assessment).

Overall, the Branch met its target for 2010/11 for average recoveries per audit hour. The Branch exceeded the target set for the number of audits to be completed in 2010/11.

1.3 Lost revenue from unreported taxes is not estimated

The Branch performs a range of activities to identify taxes owed from unreported taxable business activity. Specifically, it:

- Participates in a Federal/Provincial/Territorial Government underground economy committee
- Participates in a local Federal/Provincial compliance committee between the Canada Revenue Agency (CRA) and Manitoba Taxation Division
- Enters into memoranda of agreements for information sharing between Manitoba and CRA, and Manitoba and other provinces and territories
- Follows up on leads from field auditors.

The Branch uses information from those activities to identify possible cases of taxpayers who fail to report taxes owed. These cases are included in the audit file selection process.

The Branch does not perform any analysis to determine how much tax revenue is lost in Manitoba due to unreported taxable business activities and, using that information, also identify which sectors of the economy are more susceptible to significant unreported business taxable activity. Such an analysis would help the Branch decide what resources to allocate in detecting unreported taxes, and help it focus in the right areas.

The Ontario Government has performed such an analysis.

The Ontario Construction Secretariat, issued a report in July 2010 entitled *Underground Economy in Construction – It Costs Us All.* The Secretariat is a tripartite organization (with representatives from building trade unions (workers), signatory contractors (employers) and the Ontario Government) and was established under provincial legislation in 1993. It is intended to enhance Ontario's unionized industrial, commercial and institutional construction industry by a number of activities including developing relationships, facilitating dialogue and value-added research. Its report states:

- Practices in the construction industry during 2007-2009 resulted in estimated lost revenues to governments and government agencies of between $1.4 billion and $2.4 billion. The estimated lost revenues included unremitted Income Taxes, Goods and Services Tax (GST), Employer Health Tax, and premiums/contributions for Canada Pension Plan, Employment Insurance, and Workplace Safety and Insurance.
- Improper styling of sub-contractors as independent operators rather than as employees is the basis for the majority of the underground economy in the construction industry.
- Cash payments for services are an important contributor to the underground economy, especially for evading GST, but it is much less significant than the independent operator problem.

Statistics Canada released a study entitled *Estimating the Underground Economy in Canada, 1992-2008* in June 2011. The study concludes that for 2008:

- Upper estimate of the underground economy (value added) in Canada was $36 billion (equivalent to 2.2% of Gross Domestic Product (GDP)) although some of the underground activity is already included in the published GDP estimate.
- Personal spending on underground goods and services accounted for $24 billion, equivalent to 2.7% of the total published household expenditure figures on goods and services. And more of the underground personal expenditure was related to services (62%) than goods (38%).
- Construction related activities accounted for $11 billion of the underground economy.
- Three most significant sectors of the underground economy activities were construction (30%), retail trade (16%) and accommodation and food services (12%).

Recommendation: We recommend that the Audit Branch estimate the tax revenue lost due to unreported taxable business activity in Manitoba, and analyze which economic sectors are more susceptible to such activity. We also recommend that the Audit Branch use this analysis in planning how to detect unreported taxable business activity.

Response of officials: The Taxation Division agrees with the Auditor General's recommendation. The Audit Branch will review other jurisdictions to determine the most efficient and effective method of arriving at an estimate of unreported taxable business activity by sector in Manitoba.

The Audit Branch already performs a risk based analysis and uses a variety of information sources to optimize the use of its available resources. The Audit Branch will use the estimates on unreported taxable business activity by business sector as an additional information source in planning future audits.

2. Conduct of audits

We evaluated the Audit and Audit Review units' audit process against the Canadian Institute of Chartered Accountants (CICA) Assurance Standards. Those standards include general standards, such as requiring that auditors have an objective state of mind and adequate knowledge of the subject matter, and performance standards, such as requiring that the audit be adequately planned and the staff doing the audit be properly supervised.

2.1 Auditors' independence adequately documented

The preparation of conflict-of-interest (absence of) declarations showed the Branch considered the requirement that the audits should be performed by auditors who have an objective state of mind. In April, 2010, the Branch began to document in new audit files an assessment that the auditors assigned had no conflict of interest with the taxpayer that they audited. In the 16 audits started in April, 2010 or later in our sample, we found assessments of auditor independence in all but 1 instance. In the 1 case, an assessment for 1 of the 2 auditors assigned was not completed.

2.2 Audit work was appropriate but documentation of some risk analysis and managerial review could be improved

The audit files we examined considered the risk of error in reported taxes and the audits were adequately planned. However, documentation of the risk analysis in the files was limited. In our sample, 2 audit (hardcopy) files could not be located and we reviewed the file documents stored electronically in the accounting system, Gentax. Risks in a file are identified initially by 1 of the 2 Workload Development Officers and used to select a file (taxpayer) for audit. Once a supervisor or manager assigns the file to an auditor, the field auditor prepares an audit-planning document and the supervisor or manager-in-charge approves it before fieldwork starts. But the taxpayer profile and various factors used to identify risks were not documented in the planning section of the files. There was no section (linkage) in the audit files showing why the file was selected for audit (the identified risks) and therefore no linkage to the audit work performed. But we assessed that audit work performed was reasonable according to the risks identified in the file selection process, based on the information kept in Gentax.

File Allocation Criteria (risk factors) are used to determine the auditor classification (experience level) needed to conduct the respective audits. The Branch sets up the inventory of files for future audit based on auditor classifications. Audits are assigned to auditors by supervisors and managers based on the auditors' experience levels and availability. The assessment of audit complexity is based on criteria such as sales dollars and the type of industry. This approach showed that the Branch's assignment of files process considered whether the staff had adequate proficiency and knowledge for such audits. Documentation of the criteria used to allocate them to that audit or classification level was found in Gentax but was not included in the audit files, indicating that audit information can be stored in more than 1 place.

An understanding of the entity and its environment (knowledge of business) was documented in all the files. However, the identified risks and issues, including the risk of fraud, and their dispositions or resolutions were not fully documented in the files. The guidance in the audit forms to help auditors identify risk factors related to fraud was limited and had not been updated in the past few years.

Of the 30 audit files examined, 22 files had either taxes owed or a refund due. We re-computed the tax findings based on the information in the audit files. Our re-computed tax findings (tax assessments) matched the results in the audit files. There was sufficient appropriate evidence in the audit files or in Gentax to support the tax findings determined by the Branch. In the other 8 audit files, the documentation of procedures performed provided evidence that the taxpayer returns/accounts were accurate and no taxes were owed or refunds required.

All files were reviewed by a staff person with a more senior classification than the auditor who did the fieldwork. Auditors in the field were supervised by staff with more experience than themselves. This approach showed that the Branch's supervision and review processes considered the complexity, timing and nature of the audits.

The supervisor or manager of an audit reviews the audit file; the file consists generally of a set of standardized forms (audit package) completed by the auditor. In most cases, documentation was lacking in the files on the extent of the supervisor or manager's input in the planning phase of the audit. The audit planning forms for HET and RST audits require the lead (fieldwork) auditor to review the planning with the supervisor before beginning the fieldwork. In 8 of the files in the sample selected, the planning document was not approved in writing by the supervisor prior to the beginning of the fieldwork based on the date of the respective sign-offs.

In most cases, documentation of the supervisor or manager's review of the detailed working papers, such as review notes or initials on working papers, was lacking in the files. Only 4 sections (documents) in each file must be approved (signed off) by the supervisor or manager to indicate that the file review has been completed. These documents were completed and the date on which the file review was performed was recorded in the audit files. However, the file review was not completed generally prior to the tax findings being sent to the taxpayer. If the managerial review results in a correction to the tax findings, a revised letter is sent to the taxpayer. In all cases, the file review was completed prior to the recoveries (accounts receivable) or refunds being posted in Gentax (the accounting system). Managerial review of the file should be completed before the tax findings are sent to the taxpayer based on CICA assurance standards.

The Branch does not use audit file preparation software. Good practice in the auditing profession is to use an electronic audit file program with a library of audit methodology and audit procedures. It facilitates recording (electronically) all audit planning, examination, and finalization procedures including the review and approval by the supervisor of the audit work done. We urge the Branch to consider obtaining an electronic audit file program, with an in-house developed audit library including policies and procedures, and an electronic sign-off by preparer and reviewer, to help prepare audit files. The Audit Branch should use the program to improve audit documentation and the timing of the managerial review process.

2.3 Quality control review process generally consistent with standards

Audit Branch's quality control review group, Audit Review, consists of 3 senior staff, including the Manager. Audit files are selected for a quality control review based on established criteria. The quality control review (done after the review by the supervisor or manager responsible for the audit is finished) ensures that the audit file has sufficient and appropriate evidence to support the tax findings identified (audit conclusion). We focused our examination on a comparison with the CICA performance standards for a quality control review.

The Branch established criteria for when a quality control (QC) review was to be performed and met those criteria in the sampled files.

The QC review is done generally after the tax audit findings letter has been issued. If the taxpayer agrees with the tax audit findings (tax assessment), a notice of assessment is not issued. But if a notice of assessment is issued, the QC review is done before sending the notice to the taxpayer. The QC review has not resulted generally in a change to the tax assessment based on our sample. Because a tax assessment may still be changed after a notice is sent, the timing of the QC review is reasonable.

The Branch has established the timing, nature and extent of the QC review and how it is to be documented, which is by using a standardized form (a checklist of questions and procedures) and performing a second review of the standardized form (tax audit findings).

The standardized QC review form was completed, including a second review of the audit report checklist. The standardized form asks a series of questions, including the following:

- One multi-part question is whether the file meets the quality standards of the Taxation Division
- Other questions ask the reviewer to evaluate the completeness and accuracy of the supervisor or manager's review and to consider possible fraud (on RST audits) and the need to give that information to the Investigations unit. An evaluation of the need to involve the Collections (Taxation Administration) and an evaluation of matters that might require amendments to policies and procedures and legislation is required.

The scope and conclusions of the QC review procedures are documented on the standardized form. The form also indicates that questions from the QC reviewer need to be cleared before the QC review is complete.

The Branch has not documented, as a policy, the criteria used to determine which staff are eligible to do QC reviews, which is not consistent with CICA QC review standards.

Web Version

Chapter 8

Wireless Network Security

Winnipeg Regional Health Authority and Manitoba eHealth

Manitoba Lotteries Corporation

Executive Management
Carol Bellringer
Mala Sachdeva

Principal
Doug Harold

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Main points

What we examined

Our audit examined the security of wireless networking solutions within Manitoba eHealth (eHealth) and Manitoba Lotteries Corporation (MLC).

Through enquiry we noted that the central Provincial Government does not use wireless networks. However, many of the organizations in the Government Reporting Entity do. We selected 2 such organizations handling sensitive data for our review.

Our audit program and assessment criteria were based on internationally recognized standards including CoBIT – (Control Objectives for Information and related Technology) issued by ISACA and the 802.11i standard issued by the Institute of Electrical and Electronics Engineers (IEEE).

Why it matters

The use of mobile devices and wireless networks has increased dramatically over the past decade. This growth can be attributed to wireless devices becoming progressively smaller, cheaper and more powerful. Nearly all new smartphones, tablets, netbooks and laptops come preconfigured with wireless networking capability. Wireless networks offer tremendous benefits to homeowners and businesses.

What is often overlooked, however, is that a wireless network has many more vulnerabilities than a traditional wired network. By their very nature, wireless transmissions can travel well beyond the walls of a house or business. This significantly increases the complexity and importance of securing those wireless signals. An unauthorized individual no longer needs to gain physical access to the inside of an organization to maliciously connect to a network.

Attacks against wireless networks are costly in terms of the time an organization needs to resolve the incident and the potential financial losses and damages incurred. While it may seem like a daunting task to ensure the security of a wireless network, it can be done. Organizations need to be aware of the risks that wireless networks and equipment can pose and adopt a comprehensive risk management strategy to effectively address them. This strategy must include processes whereby new threats and vulnerabilities are tracked, identified and mitigated. Failure to do so will leave an organization with a false sense of security, unaware of the true risks presented by using this technology.

What we found

Despite many examples of good practices, we found weaknesses that need to be addressed to protect the wireless networks. We provided our detailed findings to both eHealth and MLC to enable them to remedy all of the weaknesses we encountered. We also provided our findings for eHealth to the Winnipeg Regional Health Authority (WRHA) because eHealth is administratively housed there. Our findings were that:

- Wireless risks are identified, but not managed effectively over time
- Information technology security policies do not exist at eHealth; and exist, but are not current, at MLC
- Wireless security policies do not exist
- Network security controls need improvement
- Access point configuration standards need improvement
- Wireless client device configuration standards need improvement
- Wireless monitoring is not performed
- Wireless network administrators require additional training
- Security awareness training is lacking at eHealth.

Background

eHealth

In 2006, Treasury Board approved the establishment of eHealth. The program facilitates the healthcare delivery transformation through the use of Information and Communication Technology (ICT) for health system users in Manitoba. Wireless security issues and compliance with the Province of Manitoba`s *Personal Health Information Act* (PHIA) and its regulations are of significance.

eHealth's mandate is to provide a single integrated organization capable of delivering province-wide solutions under the direction of a Manitoba eHealth Program Council to:

- Integrate health systems across regions and healthcare sectors
- Improve and expand health services by managing ICT to achieve economies-of-scale
- Improve the efficiency and effectiveness of ICT services
- Creating reliable and secure connections to the Department of Health.

eHealth reports to the Deputy Minister of Health through a Provincial Program Council that is composed of senior executives of the major stakeholders. This includes representation from regional health authorities, CancerCare Manitoba, Diagnostic Services of Manitoba and Manitoba Health.

The eHealth program is managed by a Chief Information Officer (CIO) that reports directly to the WRHA Chief Operating Officer & VP Long Term Care and Community Health Services.

After formal establishment, eHealth inherited and consolidated numerous diverse IT systems and applications from sites within the WRHA. This included the existing legacy wireless networks. An Infrastructure Strategy plan was developed in order to migrate towards a more cost effective and sustainable enterprise IT architecture.

The eHealth Information Security program consists of 5 pillars:

- Information security governance
- Risk management
- Incident management
- Configuration and change management
- Education and training.

An enterprise security architecture has been designed based upon the Sherwood Applied Business Security Architecture (SABSA). This is a risk-based, business-driven architecture that develops security controls to meet the needs of the business. The architecture incorporates strict logical and physical zoning requirements.

eHealth is operating in a sector which has made the natural transition to wireless networks due to the tremendous benefit of mobility that wireless devices offer. Doctors, nurses and other healthcare professionals rely on networked information systems. In fact, many medical devices themselves have become networked in order to send and receive critical heath data within the healthcare environment.

While wireless security vulnerabilities present risks to any network, the risks are magnified in healthcare. A patient record used to be an actual paper document that could be adequately protected by physical security controls. Today, personal health information is being stored electronically, which increases the risk of security and privacy breaches. The WRHA, operating as the host for the Manitoba eHealth program, is considered the trustee and as such is responsible for requirements in the following areas:

- Written security policy and procedures
- Access restrictions and other precautions
- Additional safeguards for electronic health information systems
- Authorized access for employees and agents
- Orientation and training for employees
- Audit.

Manitoba Lotteries Corporation (MLC)

"Under the authority of 207(1)(a) of The Criminal Code of Canada and Manitoba Lotteries Corporation Act, MLC manages and conducts provincial gaming including:

- *Casino Gaming (table games and slot machines) at Club Regent, McPhillips Street Station, Aseneskak and South Beach Casinos**
- *VLTs*
- *Ticket Games (e.g., Lotto 6/49 and scratch tickets) which are administered by Western Canada Lottery Corporation*

**By agreement, Aseneskak and South Beach Casinos (registered by the MGCC as gaming operators), provide premises, employees and equipment and, meet provincially-set casino operating standards. (Source: Manitoba Gaming Commission website)*

MLC is a Crown corporation, reporting to the Minister responsible for The Manitoba Lotteries Corporation Act through a Board of Directors. The Board sets corporate policy for the corporation and provides strategic direction to the CEO and senior executives, who are responsible for business operations."

(Source: www.mlc.mb.ca)

Cheating, theft, and fraud from both customers and employees are some of the traditional threats that casinos face. The increased reliance on networked gaming solutions and the introduction of Player Reward systems make MLC a potential target of cyber-criminals.

Personal information, patron gambling history, and facial recognition data are examples of the sensitive data that MLC handles on a daily basis. MLC has developed a Privacy Policy and Privacy Compliance Standard. Both have been implemented to ensure the protection of all information collected, used, disclosed, or stored by MLC.

Wireless Local Area Networks – General information

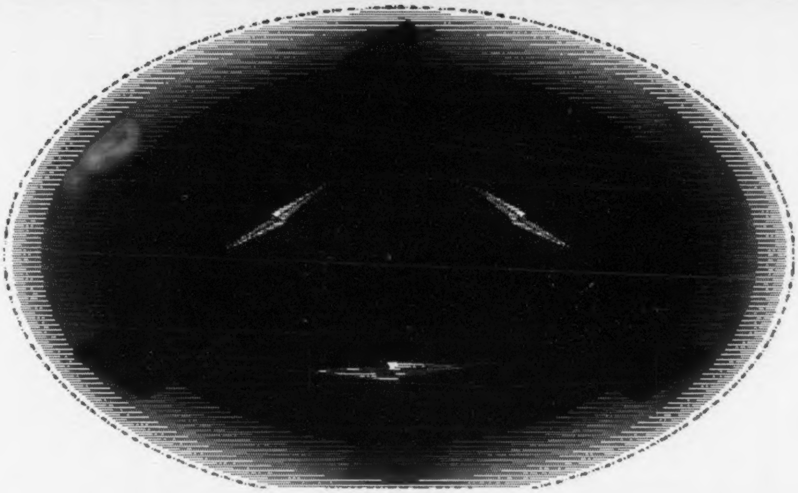
Wireless Local Area Networks (WLANs) use Radio Frequency (RF) technology for transferring data. Often referred to as "Wi-Fi" networks, they complement existing computer networks by providing mobility to end users. In 1997, The Institute of Electrical and Electronics Engineers (IEEE) established a working group (802.11) that defines the standards for these networks. While there are numerous different wireless standards (listed alphabetically), the most commonly used are: 802.11a, 802.11b, 802.11g and the new 802.11n standard. Predominantly, WLANs are configured in two different modes:

- Ad Hoc Mode
- Infrastructure Mode

Ad Hoc Mode

An Ad Hoc Mode wireless network (**Figure 1**) has no "access points" (AP). Client devices communicate with each other through their wireless interfaces. This mode is primarily used for data transfers and printing. There are increased risks associated with using this mode. If a user is connected to the corporate network and is configured to allow ad hoc networking, an attacker could connect to the user's wireless station and then attempt to use this connection to gain a foothold to the internal network. Given this risk, industry standards recommend that organizations establish and enforce a comprehensive wireless security policy that prohibits ad hoc networks unless there is a specific business requirement that has been supported by an up-to-date risk assessment.

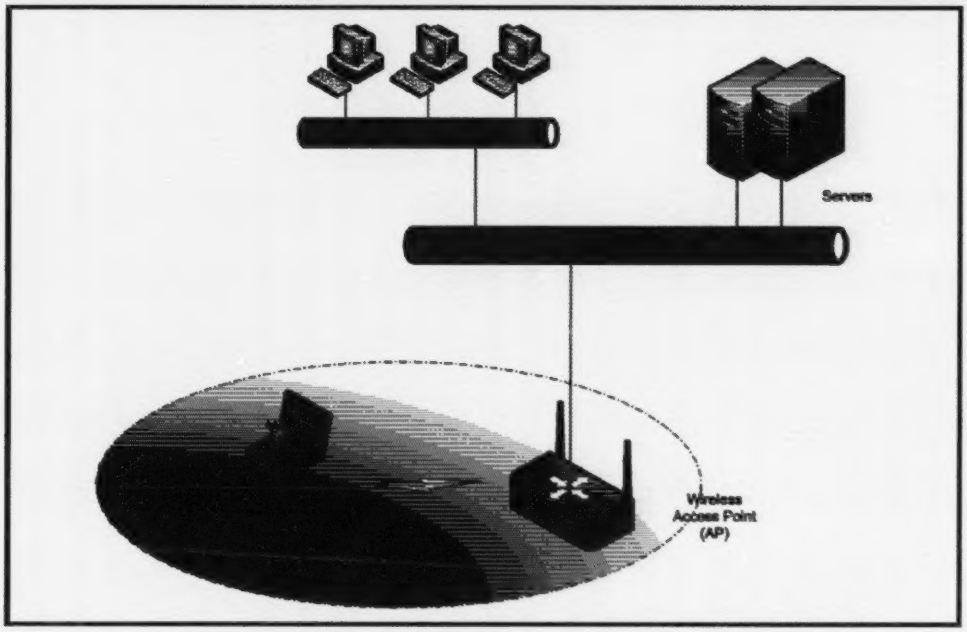
Figure 1: Ad hoc Mode



Infrastructure Mode

Infrastructure Mode (**Figure 2**) is the most common implementation of a wireless LAN. It requires an AP and at least one client device (i.e., laptop). The AP connects a number of wireless devices with a wired network giving the wireless client access to the network.

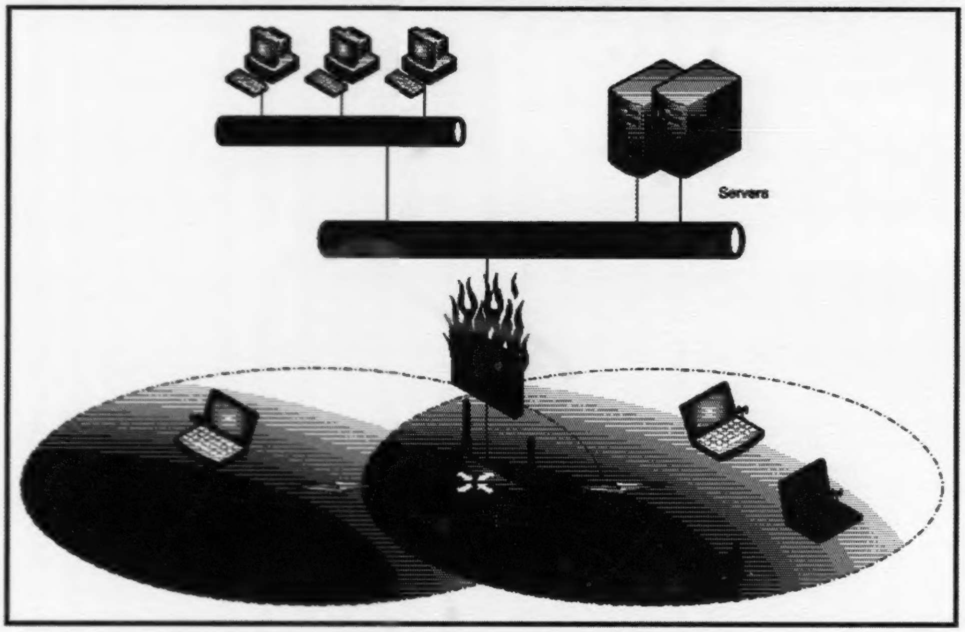
Figure 2: Infrastructure Mode



Many vendor enterprise wireless APs can host several Service Set Identifiers (SSIDs). An SSID is the name of the wireless network. Even though each SSID appears and acts as if it is an independent wireless network, in many cases, several different SSIDs could be using the same infrastructure (**Figure 3**). Each SSID can have its own authentication and encryption protocols assigned to them. Effective network security controls are critical. Wireless security is only as strong as the weakest link.

Throughout this audit, we examined both organizations' Infrastructure Mode architecture.

Figure 3: Shared WLAN infrastructure



Wireless threats

Most users are not aware of the wide variety of threats and associated risk of using this technology. National Institute of Standards and Technology (NIST) outlines common wireless threats, as noted in **Figure 4**.

Figure 4: Wireless threats

Denial of service	Attacker prevents or limits the normal use or management of networks or network devices.
Eavesdropping	Attacker passively monitors network communications for data, including authentication credentials.
Man-in-the-middle	Attacker actively impersonates multiple legitimate parties, such as appearing as a client to an AP and appearing as an AP to a client. Allows attacker to intercept communications between an AP and a client, thereby obtaining authentication credentials and data.
Masquerading	Attacker impersonates an authorized user and gains certain unauthorized privileges.
Message modification	Attacker alters a legitimate message by deleting, adding to, changing, or reordering it.
Message replay	Attacker passively monitors transmissions and retransmits messages, acting as if the attacker were a legitimate user.
Misappropriation	Attacker steals or makes unauthorized use of a service.
Traffic analysis	Attacker passively monitors transmissions to identify communication patterns and participants.

Source: From NIST 800-48 Rev1

Wireless radio waves are extremely vulnerable to undetected interception and exploitation. Attackers and security researchers are constantly discovering new vulnerabilities and ways to attack wireless networks and clients.

Rogue wireless devices can significantly threaten the overall security of an organization. The most common threat is a device that has been deployed by an authorized user who does not appreciate the severity of their actions. While this may increase the user's productivity, an outside attacker could use that rogue AP as a point of entry into the network, and avoid all perimeter security controls.

Information security involves protecting the confidentiality, integrity and availability of systems. The confidentiality and integrity of corporate wireless information remains a primary concern. However, reliance on wireless technologies for critical services could potentially present some of an organization's greatest risks. As most wireless networks operate in the unlicensed frequency band, the equipment could suffer interference from numerous sources (i.e., microwave ovens, cordless telephones, Bluetooth devices, or even a deliberate Denial of Service attack). This could disrupt access to critical services and should be an important consideration before adopting wireless solutions.

WLAN security basics

Wireless networks are more complex than their wired equivalent. Not only do the wireless devices need to send and receive the data, there is a tremendous amount of additional overhead associated with data synchronization, confidentiality, and integrity of each packet of information. One of the major challenges that organizations face is simply trying to understand the numerous technical and complex encryption and authentication protocols that are required to secure wireless transmissions.

The key for any organization is to select the appropriate encryption and authentication protocols based upon a thorough requirements and risk assessment. As well, both the wireless infrastructure and client devices must be configured to industry standards.

Audit scope and approach

Our objective was to assess the security of wireless networking solutions within eHealth and MLC. While many wireless audits focus primarily on the technical encryption and authentication standards used, we took a more holistic approach. Effective wireless security cannot simply rely on technical security solutions. Wireless networks are merely extensions of internal networks and share most network security controls. Therefore, policies, procedures and processes are equally important. As such, we assessed whether these 2 organizations have:

- Processes to identify wireless risks and monitor any changes to them
- A high-level organizational IT Security Policy
- A comprehensive Wireless Security Policy
- Robust network security controls
- Current wireless AP configuration standards
- Current client configuration standards
- An established wireless monitoring program
- Fully trained wireless network administrators
- Annual user awareness training.

We did not examine other wireless technologies such as WiMax, Bluetooth, and Radio-Frequency Identification (RFID). Also, we did not audit for compliance with PHIA and its regulations. However, several of the PHIA requirements are similar to our audit objectives.

Our examination was performed in accordance with the value-for-money auditing standards recommended by the Canadian Institute of Chartered Accountants. We included tests and other procedures necessary to obtain sufficient and appropriate evidence to support our conclusions. Our audit program and assessment criteria were based on Control Objectives for Information and related Technology (CoBIT), Establishing Wireless Robust Security Networks: a Guide to IEEE 802.11 issued by NIST, and the Wireless Security Baseline from the Center for Internet Security.

We carried out our procedures for eHealth at their main offices, their primary and secondary data centres, and 1 other building location. Our audit of MLC included corporate headquarters, Club Regent and McPhillips Street Station casinos, and an MLC warehouse.

At the beginning of each audit, we conducted an in-depth technical wireless assessment from the outside of selected buildings. This external "war-driving" style assessment was conducted using free readily available software and inexpensive wireless equipment. This simulated the capabilities available to today's wireless attackers. We used methodologies and techniques developed from SANS GIAC Assessing and Auditing Wireless Networks course (www.sans.org). This information was corroborated using commercial wireless assessment software. Internal technical scanning was also performed in order to validate system configurations and to determine if there were any rogue AP.

All high risk findings were immediately reported to senior management. A confidential technical findings document was presented to each organization and the eHealth report was also provided to the WRHA. These documents contain technical and sensitive findings that, until properly addressed, would increase the risk of network compromise to these organizations. Therefore, these findings are not included within this report. Our Office will follow up with both organizations in order to ensure they have adequately addressed these findings.

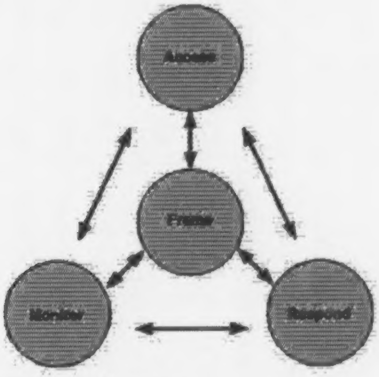
Audit findings and recommendations

1. Wireless risks are identified, but not managed effectively over time

Organizational risk can include many different types of risk. Security risk related to the operation and use of information systems is a risk that senior management must address as part of their corporate risk management responsibilities.

Risk management is a comprehensive process that requires an organization to:

- Frame risk (i.e., establish the context for risk-based decisions)
- Assess risk
- Respond to risk once determined
- Monitor risk on an on-going basis using effective organizational communications and a feedback loop for continuous improvement in the risk-related activities of organizations.



Source: (ref. NIST 800-39)

Not only do organizations need to assess wireless risks, but they also need to monitor and manage them over time. New vulnerabilities that affect wireless infrastructures are frequently discovered.

Many organizations perform initial risk assessments when implementing wireless networking projects. However, once the wireless network is operational, they neglect to monitor changes. Failure to track changes to threats and new vulnerabilities significantly increases an organization's overall risk. Many legacy

"Remember that because systems degrade and the environment changes over time, risk management must be considered a continuous process that requires the commitment, involvement and support of the organization's senior executives and board of directors." (2011 Coach Guidelines for the Protection of Healthcare Information)

wireless networks used Wired Equivalent Protocol (WEP) as a security protocol. This decision would have been supported by a thorough risk assessment. WEP has since been proven to be flawed and ineffective leaving these networks extremely vulnerable to attack. Some of these same organizations are still using WEP today because they do not have the processes in place to monitor the changes to their wireless risk.

eHealth

eHealth has adopted the Royal Canadian Mounted Police Harmonized Threat and Risk Assessment (HTRA) methodology. This risk assessment framework is used by federal departments particularly those that manage extremely sensitive and classified data. An HTRA is completed for each new IT project.

Wireless risks were identified and addressed when the wireless systems were initially installed. However, eHealth has not managed these risks appropriately since then. Some wireless networks were installed in 2004 and the risks have not been reassessed since. We determined that there are no established processes for managing changes to the threats and vulnerabilities of wireless networks within eHealth.

> **Recommendation 1:** We recommend that eHealth conduct a current wireless risk assessment. All residual risk should be reduced and formally accepted by senior management.

> **Recommendation 2:** We recommend that eHealth develop processes to effectively identify and manage changes to threats and vulnerabilities to all IT systems, including wireless networks.

MLC

MLC has implemented a comprehensive Enterprise Risk Management (ERM) framework that has aligned strategy, people, processes and knowledge to better understand its threats. They have dedicated risk management staff members that assess risk and document them in corporate Risk Registers. MLC has formalized a strategic approach to managing risk.

A wireless Risk Register was completed prior to the installation of the wireless networks. However, we determined that MLC has not established a formal process for monitoring changes to these risks.

> **Recommendation 3:** We recommend that MLC develop processes to effectively identify and manage changes to threats and vulnerabilities to all IT systems, including wireless networks.

2. Information technology security policies do not exist at eHealth; and exist, but are not current, at MLC

A formally documented and communicated information technology (IT) security policy is an essential component of a successful information security program. The single greatest threat to information security is the lack of awareness and understanding of the threats that commonly exist. Senior management approval, end user education, and a general awareness program for the information security policies and standards are essential to the success of an information security program. The IT security policy provides management direction and support for information security.

This policy should include a statement of direction from senior management supporting the goals and principles of information security. It should outline the minimum security requirements for the protection of the confidentiality, integrity, and availability of information systems. It should also clearly define information security, associated responsibilities and accountabilities.

Without a formal up-to-date IT security policy, there is an increased risk that IT security objectives will not be properly aligned with business needs, critical IT assets and healthcare/business data may not be properly protected, and security practices may not be consistent with applicable laws and regulations.

All employees should be required to sign off on their understanding of the information security policy at the time they are hired. The information security policy should be reviewed at planned intervals to ensure it is still suitable, effective and adequate.

eHealth

We began our audit by investigating the wireless networks used and operated by eHealth. Our expectation was that these systems were for eHealth corporate use. It quickly became evident that eHealth, in addition to their provincial electronic health record mandate, provides the entire technical support function for the WRHA. The wireless networks we examined were, in fact, being used by the WRHA.

After contacting WRHA, we determined that they did not have an overarching IT security policy.

We acknowledge that, at the time of our audit, eHealth had a draft IT security directive in development. This draft directive, however, would not be adequate as it would have only been applicable to eHealth employees.

Recommendation 4: We recommend that WRHA develop, approve and enforce a comprehensive, overarching IT security policy.

MLC

We found that MLC had an existing IT security policy. This policy had been signed by the CEO and is a part of the organization's overall corporate policy framework. All of the organization's other IT policies and procedures refer to this document. MLC's "top-down" commitment to information security is evident.

New MLC employees must read all information security policies and formally sign a form acknowledging their receipt. We tested this process and found no exceptions.

However, all MLC IT security policies, including the main IT security policy, were originally signed in 2005. There have been no documented reviews or updates to these policies since then.

Recommendation 5: We recommend that MLC review all information security policies on a regular basis. This review should be formally documented and any changes effectively communicated to all staff.

3. Wireless security policies do not exist

A wireless security policy is the cornerstone for articulating the enterprise wireless philosophy. It should highlight senior management commitment to protecting the enterprise from wireless risks and govern how wireless technology will be used within the organization. It should clearly dictate management expectations of wireless users.

This policy should be ratified by senior management and be made available to all individuals who use the organization's wireless networks. It should be reviewed at planned intervals and revised to take into account changes to risk assessments, privacy assessments, vulnerability assessments, and privacy laws (Federal and Provincial). Changes to this policy must be documented, approved and communicated to all staff.

This policy should:

- Acknowledge the risks associated with using wireless networking
- Outline organizational roles and responsibilities
- Ensure that all wireless networking solutions undergo a formal risk assessment. This risk assessment must be reviewed annually to account for new threats and vulnerabilities

- Ensure that the highest level of authentication and encryption are used based upon a formal wireless risk assessment
- List authorized systems and/or data classification that have been approved for use on the wireless infrastructure
- Outline Acceptable Use and employee responsibilities
- Prohibit adhoc wireless networking (unless authorized by senior management)
- Ensure that only authorized users connect to wireless networks
- Ensure that only approved wireless user devices connect to wireless networks
- Ensure that wireless user devices are securely configured. This configuration must be approved by senior management
- Detail wireless monitoring procedures
- Detail wireless incident handling procedures.

eHealth

Corporate policies must be all encompassing and applicable to every employee. Therefore we make this recommendation to the WRHA since the wireless networks are installed throughout the entire organization.

We noted that WRHA does not have a wireless security policy. eHealth has developed a wireless security standard that does include some aspects of the expected policy statements. However, it does not meet the intent of this criteria.

> **Recommendation 6:** We recommend that WRHA develop, approve and enforce a comprehensive wireless security policy.

MLC

Similarly, MLC has not developed a wireless security policy. While MLC staff clearly understand many of the principles that would be outlined within, the policy must be formalized, presented and enforced within the entire organization.

> **Recommendation 7:** We recommend that MLC develop, approve and enforce a comprehensive wireless security policy.

4. Network security controls need improvement

All of eHealth and MLC business functions rely heavily upon reliable and secure network operations. Network Security is an important consideration for every organization particularly when implementing wireless network solutions.

Adequate and effective network security controls must be implemented to protect corporate systems and data. Organizations must adopt an in-depth defence model where multiple countermeasures are layered throughout the infrastructure to address the wide variety of vulnerabilities and attacks.

Our initial focus was to ensure that the connection between the wireless and wired infrastructure was secure. However, given the shared security services involved, our assessment included a more comprehensive assessment of the organization's:

- Network security architecture
- Firewall architecture and configuration
- Intrusion detection/prevention capabilities
- Anti-malware capabilities
- Access controls
- Account management processes
- Physical security measures
- Security log management
- Incident handling procedures
- Patch management procedures.

We found that both eHealth and MLC had implemented multifaceted, industry standard enterprise security architectures. These architectures have incorporated numerous layers of security. Both organizations have strong firewall architectures positioned effectively within their networks. These firewalls not only protect the organization from external threats, but they also provide additional protection of their internal data centers where sensitive corporate and healthcare information is stored.

eHealth has adopted IT Infrastructure Library (ITIL) as a service management framework. ITIL is a public framework that outlines best practices of IT service management. By adopting these processes, eHealth has shown a strong commitment in becoming a healthcare service provider and not simply an IT management organization. Strong change management, incident management, problem management, and release management processes were evident. An integral aspect of ITIL is Information Security Management (ISM). These ISM functions have greatly assisted with the development of eHealth's Enterprise Security Architecture.

We provided both organizations with findings that outline areas for improvement. Given the detailed technical nature and sensitivity of these particular findings, they are not presented within this document. Our office will follow up with both organizations in order to ensure they have adequately addressed these findings.

> **Recommendation 8:** We recommend that eHealth address our findings in the area of Network Security Controls.

> **Recommendation 9:** We recommend that MLC address our findings in the area of Network Security Controls.

5. Access point configuration standards need improvement

Properly configuring corporate wireless APs is arguably one of the most critical components in effectively securing a wireless infrastructure. There are numerous methods and standards that can be selected to authenticate wireless users and encrypt the information sent.

Corporate standards need to be developed that enforce the most secure authentication and encryption protocols. These standards should be supported by a current risk assessment. Organizations must ensure that all security patches associated with the wireless infrastructure are identified and applied as soon as possible. Failure to implement these patches in a timely fashion significantly increases the risk of a wireless network compromise.

Once the approved standards have been implemented, they should be validated by an independent technical security evaluation to ensure they are properly implemented and effective.

One important consideration in developing the AP configuration standards is signal strength. Wireless networks are designed to provide maximum coverage and speed to their clients. This can result in signals being transmitted great distances outside of an organization. An attacker, sitting in his car in the parking lot or even a nearby home or business, can attempt to compromise the network. Without this exposed signal, the attacker would need to gain physical access to the building or get extremely close to the building where detective controls (i.e., monitored security cameras) could mitigate the risk.

During our technical assessment of both organizations we observed tremendous signal leakage. We detected wireless signals at distances beyond the physical boundaries of each facility we examined. We found that these signals extended into many adjacent residential and commercial properties.

Both eHealth and MLC outsourced the installation of their physical wireless AP antennas. These contracts did not include an expectation that the contractor would attempt to minimize signal leakage. Antenna power settings can be reduced and directional antennas deployed to ensure the wireless signal is directed towards the interior of the building.

While strong encryption and authentication are certainly more effective in reducing overall wireless risks, the distance a wireless signals travel outside of an organization should not be overlooked. Organizations must understand this risk and strike a balance between optimum WLAN coverage and minimizing signal leakage. In the event that there is a new vulnerability discovered in the current authentication and encryption methods, excessive signal leakage would drastically increase the organization's exposure.

eHealth

eHealth supports 7 different wireless networks. All of these WLANs operate on the same shared wireless infrastructure. During the initial exterior technical scan, we noted that the main eHealth corporate wireless network was using a weak legacy authentication protocol LEAP (Lightweight Extensible Authentication Protocol) in addition to their more robust authentication protocol. Fortunately the majority of wireless users were not using this weak authentication protocol and it was only minimally used. Due to the severity and potential risks in using LEAP, we immediately contacted eHealth senior staff and this configuration error was corrected.

During the technical scanning portion of the eHealth Secondary Data Centre, we noted that the hospital pharmacy network was using the very insecure Wired Equivalent Protocol (WEP). This information system automates the medication refill process to help ensure the right medication is getting to the right medical station. Once again, we contacted eHealth and reported this finding. eHealth technicians immediately reconfigured the network to a more secure configuration.

> *"WEP is viewed as insufficient for securing all forms of clinical communications. In short, WEP should not be used in any modern healthcare organization due to the security risks it creates."* (CISCO Medical-Grade Networks (MGN) 2.0 – Wireless Architectures)

Recommendation 10: We recommend that eHealth address our findings in the area of Access Point configuration standards.

MLC

MLC maintains and operates 4 wireless networks. All of these WLANs operate on the same enterprise wireless infrastructure. The main Lotteries wireless business network is configured to use the very secure authentication and encryption protocols. MLC provides wireless access to guests to provide internet access in the multipurpose rooms at the casinos or at the MLC corporate offices. Guest wireless internet access is not provided in any gaming areas within the MLC. We determined that this network is sufficiently and securely segmented from the internal corporate network.

The findings from our technical assessments were presented to both organizations. We consider these findings sensitive, and if disclosed, would increase the risk of network compromise to these organizations. They are therefore not included within this report. Our office will follow up with both organizations in order to ensure they have adequately addressed these findings.

> **Recommendation 11:** We recommend that MLC address our findings in the area of Access Point configuration standards.

6. Wireless client device configuration standards need improvement

Wireless security expert Joshua Wright has stated: Whether attacking or auditing an enterprise wireless infrastructure, all eyes eventually fall on the client configuration. (ref Hacking Exposed Wireless by Cache, Wright, and Liu) A properly implemented enterprise wireless network infrastructure is extremely difficult to attack.

However, configuration errors are common in laptop configurations; therefore, malicious individuals will turn their attention to attacking these clients. This could expose organizations to a wide variety of attacks including network impersonation "evil twin" attacks. In this instance an attacker would mimic the enterprise AP name, simulate a real network, and then steal the user's credentials or attack the client directly.

Organizations must ensure that all wireless clients are securely configured in accordance with industry standards and best practice. This includes the installation of a personal firewall, antivirus software and effective patch management on all client devices. Once these devices have been securely configured, organizations must restrict the ability of the end user from changing these configurations. Many organizations grant local administrative rights to their users for convenience. Unfortunately, this increases the risk of the client being successfully attacked and makes them much more susceptible to the effects of everyday malware.

A confidential technical findings document was presented to both organizations. These documents contain extremely technical and sensitive findings that, until properly addressed, would increase the risk of network compromise to these organizations. They are therefore not included within this report. Our office will follow up with both organizations in order to ensure they have adequately addressed these findings.

> **Recommendation 12:** We recommend that eHealth address our findings in the area of client device configuration standards.

> **Recommendation 13:** We recommend that MLC address our findings in the area of client device configuration standards.

7. Wireless monitoring not performed

Commercial access points are inexpensive and available anywhere. Employees can build unauthorized wireless networks by simply plugging one into the existing wired network without the knowledge and consent of the corporate IT department. These rogue access points can be a serious breach of network security because they are installed behind the corporate firewall and effectively circumvent all corporate security controls. Unauthorized users could then attempt to use this rogue access point as a backdoor into an otherwise well-defended network.

Organizations should wirelessly monitor for rogue access points either periodically or continuously. Continuous monitoring can also identify a significant number of wireless attacks and can assist an organization in mitigating those risks. The monitoring system should be fully integrated with an organization's Security Event/Information Management (SEIM) System tool, Intrusion Detection, and Incident Handling capabilities.

Failure to wirelessly monitor increases the risk that a rogue access point could be installed and go undetected. This could ultimately affect the confidentiality, integrity and availability of information systems and data.

During the course of the audit, we conducted extensive wireless monitoring looking for any indications of rogue access points. No wireless rogue access points were found in either organization. Note: While this assessment was extremely thorough, some rogue APs lay dormant until an attacker signals for the device to activate. Only continuous monitoring will detect these types of rogue devices.

eHealth

eHealth enterprise wireless infrastructure has the ability to monitor and notify of rogue AP activity. However, this is not monitored or reviewed by administrative staff nor is it integrated into an SEIM tool. We determined that eHealth does not perform continuous or periodic monitoring.

> **Recommendation 14:** We recommend that eHealth implement continuous wireless monitoring in high risk locations that have been identified by a wireless risk assessment. Periodic monitoring of all other locations should be performed routinely.

MLC

Similarly, MLC enterprise wireless infrastructure has the ability to monitor and notify of rogue AP activity. However, this is not monitored or reviewed by administrative staff nor is it integrated into an SEIM tool. We determined that MLC does not perform continuous or periodic monitoring.

> **Recommendation 15:** We recommend that MLC implement continuous wireless monitoring in high risk locations that have been identified by a wireless risk assessment. Periodic monitoring of all other locations should be performed routinely.

8. Wireless network administrators require additional training

As organizations adopt wireless networking technology they need qualified professionals who can design, install, support, and operate these technically complex infrastructures. Wireless administrators require a comprehensive understanding of the technology, the threats, and cost-effective defensive countermeasures. Current vendor specific technical training is necessary in order to implement and maintain effective security configurations.

Wireless security training should be essential for any wireless network. Security for wireless solutions cannot come from a single software program or hardware solution, but rather from trained wireless administrators and implementing multiple layered safeguards.

Failure to ensure that all wireless administrators receive thorough, up-to-date technical and security training could result in a system configuration error or a failure to identify and implement essential security controls.

eHealth

eHealth network administrative staff is responsible for the configuration and day-to-day operation of the wireless infrastructure. The original wireless training was provided to several staff in 2004. There has been no subsequent technical training nor any wireless security training provided since. We acknowledge that supervision on the job, experience, and informal training is in place. However, this does not fully replace specific formal training.

> **Recommendation 16:** We recommend that eHealth ensure that all wireless network administrators receive current vendor-specific wireless training and wireless security training.

MLC

MLC network administrative staff is also responsible for wireless network operations. We determined that these employees had received recent and sufficient training in wireless networking. We acknowledge that MLC's Enterprise Security Architect has received recent wireless specific security training. However, the wireless administrators have not received any wireless security training.

> **Recommendation 17:** We recommend the MLC ensure that all wireless network administrators receive wireless security training.

9. Security awareness training lacking at eHealth

The final key aspect of an effective Information Security program is Security Awareness training. Security Awareness is the human knowledge and behaviors that the organization uses to protect itself against information security risks.

All employees of an organization should receive initial training in order to educate them on written security policies and procedures as well as the associated risks. This training should include wireless networking risks and how to adequately protect against them.

> *"Security Awareness is designed to educate users on the appropriate use, protection and security of information, individual user responsibilities and ongoing maintenance necessary to protect the confidentiality, integrity, and availability of information assets, resources, and systems from unauthorized access, use, misuse, disclosure, destruction, modification, or disruption."*
> (ref: securingthehuman.org)

It is generally understood by IT security professionals that people are one of the weakest links in attempts to secure systems and networks. (ref: NIST 800-50) Actions these end users take can negatively impact the overall organizational security posture. Even organizations with robust enterprise security architectures and information security programs may still fail to protect their systems should an employee give away critical information (i.e., passwords) or open a malicious file. However, with the proper security awareness training, these same end users will recognize the critical role they have within the organization and can become the foundation of a strong information security program.

eHealth

eHealth has previously identified the requirement for Security Awareness in a funding request to Government. At the time of our audit, eHealth had provided some basic Security Awareness training to the Senior Management Team and Project Management staff. There has been no formal security awareness training provided to the remainder of eHealth staff members. eHealth does not have a formal Security Awareness program.

> **Recommendation 18:** We recommend that eHealth implement a comprehensive Information Security Awareness program. Wireless security threats and risks should be included in this core program.

MLC

MLC has developed an impressive and well rounded Security Awareness program. Posters, briefings, payroll inserts, and even Security Awareness contests are included within. Additionally, they have taken key security policies and converted them into interesting pamphlets that provide a summary of the policy, useful context and additional key security information.

The Security Awareness program has created a listing of all Information Security topics. We confirmed that "wireless network security" is a topic that has been included in this list and is scheduled for future Security Awareness initiatives.

Responses of officials and summary of recommendations

Winnipeg Regional Health Authority - eHealth

The Winnipeg Regional Health Authority (WRHA) and Manitoba eHealth agree with the findings of the Auditor General in its report on Wireless Network Security dated December 2011. The WRHA and Manitoba eHealth place a high priority on the protection of information, and we believe that the wireless security audit has provided valuable feedback and advice that will assist us in our ongoing efforts to achieve the highest possible standard in the protection of health information and information technology assets, especially as the use of wireless networks within our sites continues to grow.

In June 2011, the WRHA formally approved an overarching information security policy that helps address potential security threats and risks. Further, the WRHA is in the final stages of approving a regional wireless LAN security policy as of October 2011. In concert with these policy initiatives, Manitoba eHealth is preparing a Wireless Technical Standard, which will be published within the WRHA, and which will be shared with all Manitoba RHAs, in December 2011.

All of the recommendations contained in the report are in various stages of implementation (see attached responses to the recommendations), and many have already been addressed. Manitoba eHealth, as the WRHA's IT Service provider, is leading the WRHA's improvement effort in regards to network security, access point configurations, and client device configurations, consistent with the recommendations in this report.

Beyond these important measures, Manitoba eHealth continues to improve its information security risk management program and is increasing efforts to improve security awareness within all RHAs, and will work collaboratively with all other RHAs to ensure that similar measures are put into place across the province, as appropriate.

Recommendation 1: We recommend that eHealth conduct a current wireless risk assessment. All residual risk should be reduced and formally accepted by senior management.

Response:

- Manitoba eHealth is presently performing a comprehensive Wireless Threat Risk Assessment which will be completed in November 2011.
- Manitoba eHealth will develop a management action plan to formalize the risk reduction and improvement efforts. This plan will be submitted

for approval to WRHA senior management by the end of December 2011.

Recommendation 2: We recommend that eHealth develop processes to effectively identify and manage changes to threats and vulnerabilities to all IT systems, including wireless networks.

Response:

- Formal Threat and Risk Assessments (TRAs) have become standard practice since April 2010 within Manitoba eHealth for major IT systems, including the wireless network infrastructure. These assessments and the resulting management action plans have formalized the risk reduction and improvement effort for all major IT systems.
- A Vulnerability Management software solution is in the process of being implemented. This solution will provide an ongoing capability to identify and track technical vulnerabilities within eHealth IT systems. The initial implementation will be completed by December 2011 and an expanded implementation is planned for the first half of 2012.
- An ongoing challenge faced in comprehensive risk mitigation is the large number of legacy technologies and applications that predate the creation of the health regions; these are being addressed within our overall capital and operating plans on a priority basis.

Recommendation 4: We recommend that WRHA develop, approve and enforce a comprehensive, overarching IT security policy.

Response: WRHA has established an overarching IT Security Policy (June 2011) and has updated the existing Computer and Internet Usage Policy (June 2011). These policies have also been shared with the Provincial CIO Committee which includes representation from all Regional Health Authorities (RHAs).

Recommendation 6: We recommend that WRHA develop, approve, and enforce a comprehensive wireless security policy.

Response:

- WRHA is in the final stages of approving a wireless LAN security policy (October 2011).
- Consistent with the WRHA policy initiatives, Manitoba eHealth is preparing technical and security standards, which include wireless LAN technology. These standards, referenced in the above policies, will be shared with all RHAs once available. The eHealth standards will be

completed during the 4th quarter of fiscal 2011/12. The Wireless LAN technology standard will be completed in December 2011.

Recommendation 8: We recommend that eHealth address our findings in the area of network security controls.

> ***Response:*** Manitoba eHealth is continuing network security improvement efforts based on internal assessments which will include the wireless security audit results. A risk mitigation plan to address all recommendations over time is currently in place.

Recommendation 10: We recommend that eHealth address our findings in the area of Access Point configuration standards.

> ***Response:*** Manitoba eHealth has completed an update of the configuration of production wireless Access Points to address the most significant audit findings. Upon completion of the wireless LAN technical standard and the wireless threat risk assessment, Manitoba eHealth will update all wireless Access Point configurations to reflect the approved standard. A plan is in place to implement the remaining by the end of March 2012.

Recommendation 12: We recommend that eHealth address our findings in the area of client device configuration standards.

> ***Response:*** Manitoba eHealth has developed a client device configuration standard. This standard does not allow end user access to the device's configuration and has been implemented in over 70% of the wireless devices. The client device configuration standard will be finalized upon completion of the wireless LAN technical standard and the wireless threat risk assessment that are referenced previously. A plan is in place to implement the remaining items by the end of March 2012.

Recommendation 14: We recommend that eHealth implement continuous wireless monitoring in high risk locations that have been identified by a wireless risk assessment. Periodic monitoring of all other locations should be performed routinely.

> ***Response:*** The wireless LAN security policy establishes a clear mandate for wireless network management and monitoring and assigns responsibilities to Manitoba eHealth and WRHA site management as appropriate. Pursuant to this mandate, Manitoba eHealth has prepared a wireless monitoring

strategy which includes routine monitoring, with priority monitoring to be based upon the wireless threat/risk assessment.

Recommendation 16: We recommend that eHealth ensure that all wireless network administrators receive current vendor-specific wireless training and wireless security training.

Response: Manitoba eHealth is training all designated network administrators on wireless technology. They are being provided vendor-specific wireless training and wireless security training and ongoing training will also be provided.

Recommendation 18: We recommend that eHealth implement a comprehensive Information Security Awareness program. Wireless security threats and risks should be included in this core program.

Response:

- Manitoba eHealth has completed an Information Security Awareness and Training strategy. One of the key goals of this strategy is to raise awareness of the various security related policies at the WRHA (IT Security, Computer and Internet Usage and Wireless LAN Security).
- A Senior Security Analyst has been hired in March 2011 to implement a Security Awareness and Training program. This program effort will be ongoing.

Manitoba Lotteries Corporation

Recommendation 3: We recommend that MLC develop processes to effectively identify and manage changes to threats and vulnerabilities to all IT systems, including wireless networks.

Response: Manitoba Lotteries (MLC) agrees with this recommendation. MLC has a contract with KPMG to perform an annual network security review. All risks identified in this year's review are being addressed. MLC will have KPMG review the network security risk assessment including wireless as part of their annual network security review.

The next annual review is scheduled to commence prior to end of fiscal 2011/12.

Recommendation 5: We recommend that MLC review all information security policies on a regular basis. This review should be formally documented and any changes effectively communicated to all staff.

> *Response:* Manitoba Lotteries agrees with this recommendation. MLC will publish a plan to update and develop information security policies. The new policies will be taken from the PWC Year 1 Network Security Assessment report.
>
> This plan will be developed prior to end of fiscal 2011/12.

Recommendation 7: We recommend that MLC develop, approve, and enforce a comprehensive wireless security policy.

> *Response:* Manitoba Lotteries agrees with this recommendation. MLC plans to start developing a wireless policy in January 2012.
>
> This policy will be completed by end of fiscal 2011/12.

Recommendation 9: We recommend that MLC address our findings in the area of Network Security Controls.

> *Response:* Manitoba Lotteries agrees with this recommendation. MLC has already addressed one finding and is developing a program to complete the other findings.
>
> This program will be implemented by Q2 fiscal 2012/13.

Recommendation 11: We recommend that MLC address our findings in the area of Access Point configuration standards.

> *Response:* Manitoba Lotteries agrees with this recommendation. Since the security review was done, MLC addressed the findings.
>
> Manitoba Lotteries considers this item complete.

Recommendation 13: We recommend that MLC address our findings in the area of client device configuration standards.

> *Response:* Manitoba Lotteries agrees with this recommendation.
>
> This program is in progress and will be completed by Q4 fiscal 2011/12.

Recommendation 15: We recommend that MLC implement continuous wireless monitoring in high risk locations that have been identified by a wireless risk assessment. Periodic monitoring of all other locations should be performed routinely.

> ***Response:*** Manitoba Lotteries agrees with this recommendation. Since this recent security review was done a program has been formalized and put in place.
>
> Manitoba Lotteries considers this item to be complete.

Recommendation 17: We recommend that the MLC ensure that all wireless network administrators receive wireless security training.

> ***Response:*** Manitoba Lotteries agrees with this recommendation. Training will be added to the training curriculum for appropriate MLC staff.
>
> The training for these MLC staff will be completed by Q4 fiscal 2011/12.